UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 643 (PKC)

GARY HIRST,

Defendant.

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September 13, 2016
10:30 a.m.

Before:

HON. P. KEVIN CASTEL

District Judge
and a Jury

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN R. BLAIS
AIMEE HECTOR
REBECCA G. MERMELSTEIN
Assistant United States Attorneys

SHER TREMONTE LLP
Attorneys for Defendant
BY: MICHAEL TREMONTE
JUSTINE A. HARRIS
NOAM KORATI BIALE

ALSO PRESENT:
SPECIAL AGENT SHANNON BIENIEK, FBI
ELLIE SHEINWALD, Paralegal
GARY SMITH, Paralegal
RYAN POLLOCK, Paralegal

(A jury of 12 and four alternates was impanelled and sworn)

(Trial resumed; jury not present)

THE COURT: I am in open court and my deputy reached out to Juror No. 24, who had not arrived, was to arrive to begin proceedings at 10 a.m. We tried to put it on the speakerphone and I was unable to do so. So I spoke to the juror in the presence of everyone in open court, but the phone call could not be transcribed.

The juror told me that she opened a store at 6 a.m. this morning. She described it as, or named it as Petite Shell at a location in Brooklyn. I asked her the address. She said she didn't know the address. It was more like a home, and that her boss is somebody by the name of Odette, O-D-E-T-T-E, Brenner, B-R-E-N-N-E-R, and that she is up for a promotion and she thought she would lose her job if she didn't come in.

I asked her whether anyone told her to disregard the direction to come in. She said no, that she took it upon herself, that she was not able to reach her boss, and she indicated that she was up for a promotion. She said she was very sorry.

I asked her the question of, could she explain to me why she did not telephone anyone to indicate at least that she wasn't coming, and she could not explain that. She said she couldn't do that until she opened the store, which she said was

6 a.m. And I explained to her that there is a courtroom here of about maybe 60 people or so with 13 other jurors waiting on her, the prosecution and defense, and I ordered her to appear in courtroom 11D on this Friday, which is September 16, at 3 p.m., at which time I would hold a hearing and direct counsel for the government and defense to be present.

That concludes the conversation.

The juror who is in which seat?

THE DEPUTY CLERK: 10.

THE COURT: Any objection to my excusing the juror?

MS. MERMELSTEIN: No, your Honor.

MS. HARRIS: No, your Honor.

THE COURT: The juror is excused.

Please bring the remainder of our jurors in.

(Continued on next page)

(Jury present)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

I want to thank you for your cooperation. I don't want to be like the preacher who preaches to the congregation about the people who don't come to church. You were all here and you were here on time. There was a personal matter with one of our jurors that has required me to excuse that juror. There is no significance to that, other than for me to say that I know you will work with me to be here on time, and I know it's difficult, and I think you understand that when that happens, it's not just a personal inconvenience to one person but to many.

So I thank you. You're here. And let me give you some preliminary instructions and then we are going to proceed with the opening statements in this case.

As I told you during jury selection, my job is to instruct you on the law and your job is to follow my instructions.

This is a criminal case and the defendant has been charged in an indictment filed by a grand jury sitting in this district. The indictment is only an allegation. It is proof of nothing. The defendant is presumed to be innocent.

The indictment contains four counts. Each count charges the defendant with a separate crime. Although there are some facts in common with respect to the different counts, each count will be considered by you separately and you will return a separate verdict on each of the counts.

Count One charges that from in or about 2009 through in or about 2011, the defendant conspired or agreed with others to commit securities fraud in connection with the issuance of shares by Gerova and the disclosures or lack of disclosure to the investing public regarding Gerova.

Count Two charges that from at least in or about 2009 through in or about 2011, defendant committed securities fraud in connection with the issuance of shares by Gerova, and the disclosures or lack of disclosures to the investing public regarding Gerova. This is the substantive count.

So there was a conspiracy to commit securities fraud count and a count of actual securities fraud.

Conspiracy, I will tell you what the elements of that crime are at the end of the case, but that's the distinction.

Count Three charges that from in or about 2009 through in or about 2011, the defendant conspired or agreed with others to commit wire fraud in connection with the issuance of shares by Gerova, and the disclosures or lack of disclosures to the investing public regarding Gerova.

Count Four charges that from at least in or about 2009 through in or about 2011, the defendant committed the substantive offense of wire fraud in connection with the same matters.

So there's conspiracy to commit securities fraud and securities fraud. There is conspiracy to commit wire fraud and wire fraud. Those are the four counts.

Again, the indictment is not evidence. It's just the charges that the government is required to prove, and it's required to prove each element by proof beyond a reasonable doubt.

As I mentioned, the law presumes the defendant to be innocent of all charges against him and the burden is upon the prosecution to establish the defendant's guilt beyond a reasonable doubt with respect to each element of each offense charged.

The burden never shifts to the defendant and the law never imposes on a defendant the obligation of doing anything in a criminal trial. The presumption of innocence remains with the defendant throughout the trial unless and until, after hearing and considering all of the evidence and my final instructions on the law, you as jurors unanimously are convinced of the defendant's guilt beyond a reasonable doubt on a particular count.

Until it is time to deliberate at the conclusion of the case, it is important that you keep an open mind.

Ladies and gentlemen, you will not be called upon to review the charges, evidence or outcome of any case except the case now on trial. You must pay close attention to all the evidence presented. Evidence consists only of the testimony of witnesses, documents and other things admitted into evidence, as well as stipulations agreed to by the parties.

Certain things are not evidence and must not be considered by you. I will list them for you.

1. Statements, arguments and questions, including opening and closing arguments, are not evidence. Nor are my own statements to you.

Evidence is what comes out of the mouths of the witnesses, the exhibits received into evidence, and the stipulations of the parties.

So when in a few moments the lawyers are invited to come to the podium to make an opening statement to you, they are giving you a preview of what they believe the evidence will be, but their statements themselves are not evidence.

Similarly, when a lawyer asks a question, the question is not evidence. It's the witness's answer that makes it evidence. So you consider then the question together with the answer.

So if somebody, to take an absurd example, were you at a Jets game in the Meadowlands last week and did you smash the window of a car in the parking lot? Well, apart from the fact that that's two questions in one, the question itself is evidence of nothing. You're sitting there and you're saying

Meadowlands, Jets, last weekend, there must be something to it. The question is not evidence unless and until the witness answers. And if the witness says, yes, that's evidence. If the witness says, no, that's evidence also. But not the question itself.

You draw no conclusion from the fact that somebody asked a question, that there is any truth underlying the question. It's the answer that makes it evidence.

Objections to questions are not evidence. Lawyers have an obligation to their client to make an objection when they believe evidence is being offered improperly under the Rules of Evidence. You should not be influenced by the objection or by the court's ruling on it.

If an objection is sustained, ignore the question and any answer that may have been given. If it is overruled, treat it like any other answer. If you're instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

Something else that is not evidence is any testimony that the court has excluded or stricken or told you to disregard is not evidence and must not be considered.

We are all humans. Sometimes testimony comes out and on further reflection the court will rule, no, that was not admissible evidence, and I may tell you that that evidence is stricken from the record and you must disregard it.

The other thing that's not evidence is anything you may have seen or heard outside the courtroom. You are to decide this case solely on the evidence presented here in the courtroom, and I will give you specific instructions about that in a moment.

Now, in deciding the facts of the case, you will have to decide the credibility of the witnesses. How truthful and believable they are.

How do you decide what to believe and what not to believe? Well, you are going to listen to the witnesses, watch them and observe them and then decide as you would decide such questions in your ordinary life. Did the witness know what he or she was talking about? Were they candid, honest, open, truthful? Did the witness have a reason to falsify, exaggerate or distort his or her testimony?

Sometimes it's not what a witness says but the way that they say it that gives you a clue or indication as to whether or not you should accept the witness's version of an event as credible.

In short, the way a witness testifies may play an important part in your reaching a judgment as to whether you can accept the witness's testimony as reliable.

You will use your common sense, your good judgment to evaluate the testimony of a witness based on all of the circumstances.

You must keep an open mind until the whole case is over. A case can be presented only step by step, witness by witness, and it would be unfair to one side or the other for you to make up your mind until you have heard all the evidence. You should not reach any conclusions until you have heard all of the evidence.

In order to ensure you decide the case only on the evidence and are not influenced in any way by anything that might occur outside the courtroom in your presence, I give you the following set of instructions.

You will hear me say this a couple of times. Do not discuss the case among yourselves or with anyone else. That means family members, friends, loved ones, relatives. No one. And that means your fellow jurors as well. You don't go in after a break and discuss what happened on the witness stand. You save that for the deliberation process. You will have the opportunity -- in fact, the duty -- to discuss the case. But that's after all the evidence is in and I have given you the final instructions.

Next, you're not to read anything on the Internet or in newspapers or watch any broadcast about this trial if that should happen. I don't know that it will happen. It's a violation of your oath as a juror to seek out information about the people and events in this case or to research the law. Your consideration of this case must be based only on what you see or hear in the courtroom.

I told you yesterday how unfair it would be fair if it were one of your family members involved in this case or you were involved in this case to have jurors consider things that they have located on the Internet or elsewhere, where if it were brought out in the courtroom, if it were admissible and were brought out in the courtroom, one side or the other might have a simple explanation for whatever it is you found. And it's dishonest and not the process that we follow. So I must insist that you follow that instruction.

Also, do not receive or send any electronic communications about the case. This includes texting, e-mailing, blogging, posting. Maybe some of you guys use Instagram and Snapchat, etc. I don't, but they are all off limits in terms of discussing this case. So you don't post anything on any social network site or any electronic communication to discuss or even mention the case.

Next, you are not to allow anyone to speak to you about the case. If you're approached by anyone to speak about it, politely tell them that the judge has directed you not to do so. But then report the incident to me promptly.

Also, be sure that I am informed if any person you know happens to come into the courtroom. This is a public trial so this could happen. But it is important that you do not hear from them what may have happened in the courtroom while the jury was not present.

If you should see a friend or relative come into the courtroom, please send a note to me through the clerk at your first opportunity.

Now, the attorneys, the defendant and the witnesses are not permitted to talk to the jury outside the courtroom, not even to offer a friendly greeting. So if you see them outside the courtroom, they have been instructed to treat you as if you were a perfect stranger.

They may know you're on the jury and you may know they are an attorney for the case, but you will be following my instructions, just as the lawyers and witnesses are following my instructions, by just acting as if you're all total strangers. They are not being disrespectful to you. They are following my instructions.

One thing about notes. If there is ever a reason to send a note to the court through the deputy clerk, one thing I would ask you to do, and it may sound impolite but it's following my instruction, don't discuss it with your fellow jurors.

Let's say you happen to see something or read something and you weren't sure whether you were supposed to read or see it. You don't come in in the morning and say, let me tell you what happened yesterday. What do you think I should do. Is this important? Should I send a note to the judge? It's much better if you just send the note, and your fellow juror is not being impolite if they privately write a note to the Court on a matter such as that. That way if for some reason it required the juror to be excused, we wouldn't have the problem of having all the jurors excused.

Now a few words about trial procedure. As I said, the lawyers are going to have an opportunity to make an opening statement to you. They are not required to do so, and the statements are not evidence. They give you kind of an overview or a preview.

After all the evidence has been received, then the lawyers have the opportunity to sum up. Again, these arguments will not be evidence, but they will be the lawyer's view of what the evidence did or did not show.

Thereafter, I will give you detailed instructions on the law that governs this case. And in fact, it's my practice to give you the typed text of that so that you will have it with you in the jury room.

Now, with that said, I now will give the government the opportunity to deliver an opening statement.

Ms. Mermelstein, you will be delivering it for the government?

MS. MERMELSTEIN: Yes.

THE COURT: Thank you. Any time you're ready.

MS. MERMELSTEIN: Gary Hirst, the defendant, was the president of a company and it was his job to benefit and protect the investors who invested in it. But that is not what he did. Instead, he cheated the investors by treating the company as his personal piggy bank.

He secretly issued himself and his partners $72 million worth of stock in that company, stock that he did nothing to earn, stock that he was not owed. Then he and his conspirators covered up their crime by creating a paper trail of fake documents, documents that were full of lies, documents they hoped would keep them from ever getting caught.

But the conspirators had a problem. Nobody wanted to buy $72 million worth of this company stock. And the conspirators had to be able to sell the stock to actually profit from their scheme and put cash in their pockets.

So here is what they did. They secretly paid professionals who manage other people's money to buy the company stock, stock they never would have bought if they hadn't been bribed to do so. In other words, the conspirators fraudulently created the demand. They created their own buyers for the company stock they so desperately needed to sell.

The conspirators' scheme harmed the company's investors in two different ways. First, Gary Hirst's scheme harmed current investors, people who already owned stock in the company. Because when Hirst issued millions of new shares of stock, he made the current investors' investment worth less money.

Think about it like this. If you cut a pie into more pieces, every piece gets a little bit smaller. And when Hirst issued millions of new shares, he caused the existing investors to own less of the company. Their pieces of the pie got instantly smaller.

But the scheme also hurt investors in a second way. When the conspirators bribed the brokers to buy that stock, the investors who ended up owning the stock were also harmed. Those investors never would have bought stock in the company if the brokers hadn't been bribed. So those new investors were cheated too.

As you will learn, the defendant's house of cards eventually came crashing down and the stock became worthless. So that second set of investors also lost all of their money.

As you can tell, you're going to hear a fair amount in this trial about the stock market. Perhaps that sounds complicated now. But that was part of Gary Hirst's plan. Hirst knew the rules of the stock market. He knew how to break them, and he hid behind the rules when he betrayed his company and his company's investors.

Complexity was his friend. It made it harder for him to get caught. But he did get caught. And when you peel back all of the financial jargon in this case, you will see it for what it is -- a simple scheme to steal tens of millions of dollars.

So let's talk about this scheme in a little more detail.

The defendant was the president and the chairman of the board of a company called Gerova. The defendant's partner in crime was a man named Jason Galanis.

Now, Jason Galanis wasn't allowed to run a public company because he had been in trouble with the government before. So while Gary Hirst was the public face of the company, Jason Galanis's role was not disclosed to the public.

In reality, though, Gary Hirst and Jason Galanis were a team. They ran the company together. And you will learn that they didn't run the company the way they were supposed to, the way Gary Hirst was obligated to, for the benefit of investors. Instead, they ran the company to benefit themselves.

Here is how they did it. They wanted to use Gerova as their personal piggy bank. But Gerova didn't actually have a lot of cash. So they stole from Gerova in the next best way. They gave themselves free stock, stock that ended up being worth $72 million.

Now, the president of a company can't just give out stock. There are rules to protect investors from that sort of thing, rules that are enforced by government regulators. Here, the Securities and Exchange Commission, or the SEC. But as I mentioned, Hirst and Galanis knew those roles. They knew how to manipulate them and they knew how to use those rules to cover up their criminal scheme.

You see, if a company gives out stock to a person in the United States, the SEC has to approve that. These rules are designed to protect U.S. investors. But if a company gives out stock to a person overseas, the company doesn't have to tell the SEC. But if you do that, if you give stock to an overseas person, that person has to make a promise. He has to promise that he will not sell that stock in the United States for a period of time.

That's the rule that Hirst and Galanis broke and then papered over with fraudulent documents. That's where the criminal scheme began.

The first thing that Hirst and Galanis needed for their criminal scheme was someone overseas that they could trust. So step one of the plan was to find a person who was born overseas and who could be trusted and controlled, a straw man, a person whose identity they could use. And Jason Galanis had a solution. His brother had a trusted friend who was born overseas and lived in Europe. This was a friend who could be controlled for a price. And for a fee that friend agreed to be Hirst's and Galanis's straw man.

The friend agreed that Hirst and Galanis could use his name in their scheme, to pretend that stock was being issued to him when in fact the stock was actually being issued to Hirst and Galanis for work they had not done.

So that was step one. Recruiting the straw man.

The next step was for the conspirators to actually issue the shares, and that was one of Gary Hirst's roles in the scheme. He played that role to a T.

In May of 2010, Hirst sent a letter that authorized the issuance of more than five million shares, worth more than $70 million. Shares that looked like they were going to the straw man, but were actually going to be controlled by Hirst and Galanis.

Now, putting the shares in the straw man's name helped Hirst and Galanis to hide the shares from the regulators, but they still needed to justify why the straw man was getting any shares at all. After all, companies normally don't give away valuable stock for no reason. So the conspirators turned to step three, creating a cover story with fake documents.

The conspirators put together a fake consulting agreement. The agreement claimed that the straw man had performed valuable work for Gerova and in exchange for that work, he was entitled to be paid. But everything about that agreement was fraudulent, because the straw man had never done any work for Gerova. There was no reason for him to be paid at all.

Now, the fake agreement called for the straw man to be paid roughly $2 million. And that's because Hirst was smart and he was careful. He knew that that fee had to look like a reasonable amount for this imaginary consulting work. Not too little, but definitely not too much. People would have noticed a bigger number. They would have asked questions.

But Hirst and the other conspirators had much bigger plans. Remember, they had already issued $72 million of shares to themselves, shares worth much more than the $2 million in this fake agreement. So they doubled down. They created a second fake agreement. And the second fake agreement said that instead of cash, the straw man was going to behave in something called warrants, that the straw man was going to trade the 2 million he was owed for $2 million worth of warrants.

Let me pause for just a moment to explain what warrants are.

Warrants are like stock options. They give the owner the right to buy stock in a company at a particular price. The value of a warrant depends on the value of the stock at the time that the warrant is issued.

When the conspirators were cooking up this second fake agreement, they knew that the stock price of Gerova had recently gone up. For someone willing to engage in fraud, this was a golden opportunity. Why? Because the best way to cash out on fake warrants was to pretend that they were issued when the stock was cheap and then sold when the stock was more valuable. Make it look like they had bought low and sold high. And that is exactly what they did.

The conspirators pretended that the fake agreements had been issued months before when the stock was cheap. To do that, they backdated the agreements. They literally backdated them. Meaning they created the agreements in one month and they made it look like the agreements had been signed months before.

By backdating the agreements, they made it appear that the warrants had been granted when the stock was cheap, when the warrants would only have been worth about $2 million, the amount on the fake consulting agreement. But at the time that they drafted these fake, backdated agreements, the stock price had already gone up. So they knew what those warrants were really worth. More than $70 million. And just like that, the conspirators had papered over their fraudulent scheme and the theft of $72 million of shares. First by creating a fake $2 million consulting agreement and then by transforming the justification for $2 million into a justification for $72 million. All to cover up the fact that they had issued shares to themselves for no legitimate purpose.

Hirst hid that $72 million from the company. He didn't tell anyone about the fake warrant agreement. He didn't tell anyone he had issued $72 million worth of shares. He didn't tell any of the people involved in running the company.

He didn't tell the board of directors. He didn't even tell Gerova's chief financial officer, the man charged with monitoring and reporting the company's financial health to the public.

So now Gary Hirst and the co-conspirators have the fraudulent shares and they have covered up the fraud with a paper trail of fake documents.

Now the conspirators had to turn to the next step, to step four. They had to turn those shares into cash. So they deposited the shares into brokerage accounts, just like bank accounts for stock.

You will see that they opened those accounts in the straw man's name. But they weren't really the straw man's accounts. They were completely controlled by the conspirators. And then once they controlled those accounts, they got their money in two ways. They borrowed against the shares to get cash and they started selling the shares on the stock market.

The problem was, as I mentioned before, nobody really wanted to buy these shares. And as they kept trying to sell, that caused the stock price to go way down. But the conspirators had a plan for that too. Step five.

The conspirators recruited investment advisers, people who invest money on behalf of clients, like stockbrokers, and they offered those brokers bribes to buy Gerova stock, the Gerova stock they wanted to sell.

The result was that for a period of time the conspirators controlled the market for Gerova stock. They told the brokers when to buy, how much to buy, and how much to pay. And that is because the conspirators were selling Gerova stock at exactly the moment when they knew there were going to be buyers for it. In other words, they matched their selling to that buying.

By paying those bribes, by matching the trades, the conspirators managed to sell about $20 million worth of their shares. What happened to that money? It went right into the conspirators' pockets. And Gary Hirst himself got $2.6 million of that money.

So things were going pretty well for the conspirators. And then Jason Galanis's role in the company came out. Remember I told you earlier Jason Galanis wasn't allowed to run a public company because he had been in trouble with the government before.

When the public learned that Galanis was behind Gerova, Gerova's stock price began to fall, until, in just a few months, it was worthless and all of the investors who had purchased Gerova lost their money.

That is a brief overview of what you will hear happened, how Gary Hirst used the company as his personal piggy bank and made tens of millions of dollars for himself and his friends by betraying the shareholders that he was obligated to protect.

Now, how are we going to prove that to you?

First, you are going to see documents signed by the defendant that made this fraud work. For example, you will see the defendant's signature on the document that secretly issued the shares to the straw man. And you will see the fake agreement that the defendant signed to justify giving out the shares that were really going to the defendant and to his cronies.

You are going to see other documents that prove that these fake agreements were backdated, because you're going to see that the straw man was first recruited into this scheme months after the date on those fake agreements. So you will see documents.

You will also hear from witnesses. You will hear from executives of Gerova, people who worked with Gary Hirst day to day, who sat in board meetings with Gary Hirst, and they will tell you the straw man never worked for Gerova, that there was no reason for him to get paid by Gerova, that they had never even heard of him. And they will tell you that Gary Hirst never disclosed anything about this warrant agreement or about the issuance of $72 million of shares until it was far too late.

You will hear that the defendant didn't just lie about this fraud to people at the company. You will see, for example, that the defendant frequently communicated with the New York Stock Exchange, because it was very important for the company to stay listed on the exchange. And you will see that the defendant hid this fraud from the Exchange and that he lied to them about the fraudulent shares and about Jason Galanis.

You will also hear from witnesses who worked at the brokerage firms that were involved in selling the fraudulent shares, and you will hear about the other side of the matched trading that the conspirators controlled.

One of those brokers will testify and he will tell you that he was bribed to buy shares of Gerova by Jason Galanis. He will also tell you that he has taken responsibility for his actions, that he has pled guilty to his criminal conduct in connection with the scheme and that he is testifying at this trial in the hopes of a more lenient sentence. And you will see that his testimony is consistent with other evidence in this case, including brokerage records and phone records that show the exact timing of the matched trading.

You're going to see bank records and other documents that show where the money went. You will see that the money went to benefit the co-conspirators. And by following the money, you will see that Hirst himself profited to the tune of about $2.6 million.

Finally, you are going to hear the defendant himself talk about his crime and laugh about how he had gotten away with it.

You see, sometime after the fraudulent shares were issued, the defendant was talking on the phone with Jason Galanis. What the defendant did not know was that that call was being recorded by the FBI.

And what does the defendant say when he thinks that no one can hear him, when he thinks that he is talking to his trusted partner in crime? "That whole, that whole Shahini thing, I mean nobody, they totally missed it. Everybody."

Gary Hirst was congratulating Galanis on the success of their scheme. You see, Shahini was the name of the straw man, the person that Hirst and Galanis controlled, the person they used to get all of those fraudulent shares. And what does Hirst say about the straw man? What does he say about the whole Shahini thing? "They totally missed it. Everybody."

But not the FBI, and, ladies and gentlemen, not you. By the end of this trial, you are going to see exactly what the whole Shahini thing really was. A scheme to steal millions of dollars and defraud the shareholders that Gary Hirst was supposed to protect.

Between now and then, let me ask you to do three things. First, pay close attention to the evidence; second, listen to Judge Castel's instructions on the law; and third, use your common sense, the same common sense you use in your every day lives.

If you do those three things -- if you listen to the evidence, if you follow the judge's instructions on the law, and if you use your common sense -- you will reach the only verdict that is consistent with the evidence in this case, that Gary Hirst, the defendant, is guilty.

THE COURT: Thank you, Ms. Mermelstein.

Ms. Harris, you are going to open for the defendant?

MS. HARRIS: Yes.

THE COURT: Any time you're ready.

Thank you.

MS. HARRIS: Good morning.

You just heard a lot from the government. You heard a lot about a complex scheme involving a cast of characters, the movement of money, matched trading, intricate facts about market manipulation. This case boils down to what was in Gary Hirst's head when he signed two documents -- the warrant agreement, that you heard the government talk about, in March 2010, and then the letter to Continental, to the stock issuance company, to authorize the issuance of shares.

The fact is that Jason Galanis used Gary Hirst, and the fact is that Gary did not think there was anything wrong with these two documents. Just the opposite. He thought he was doing everything properly, that he was doing exactly what his job required him to do.

It never occurred to Gary that by signing these two documents that he would somehow make it possible for Jason Galanis to perpetrate this massive fraud. Gary did not get any tainted money, he did not commit a crime, he is not guilty.

Now in 2010, a lot was going on at Gerova. Gerova was what is called a special purpose acquisition company. All that means is that its goal was to acquire other companies, to get other assets. And so there are a lot of deals in the works. And even though Gary's title was president, he wasn't the CFO, he wasn't the CEO. He advised, he consulted, he ran board meetings, and he took care of the issuance of stock.

He wasn't doing this alone. Working alongside of him were a number of experienced and respected professionals. There was the CFO, Michael Hlavsa. You will hear from him in this trial. There were actually two CEOs. Marshal Manley and Joe Bianco, both of whom had excellent pedigrees and were thought of as extraordinarily capable and both of whom, by the way, made enormous amount of money for a very short period of time.

Then there was the board of directors, comprised of experienced and respected professionals, including Jack Doueck, who you will hear from as well.

And, of course, Gerova worked with lawyers. They had Hodgson Russ, LLP and DLA Piper advising them. Both well-established and highly-respected law firms.

All these people -- the board of directors, the CEO, the CFO, the lawyers -- eventually saw each of the documents the government told you about: The warrant agreement, the Shahini consulting agreement, and the letter to issue the shares.

Back in 2010, nobody thought there was a problem with these documents. In fact, in October 2010, the board of directors, with lawyers at their side, approved and ratified the very transactions that the government is claiming is now the key evidence in this case.

But somehow, even though all of Gerova's officers and directors knew the same thing as Gary knew and approved and ratified the transactions, at counsel table, at defense table today is only one man, our client, Gary Hirst.

This case is not a case about a criminal defendant. This case is about a scapegoat.

So the term scapegoat has its roots in biblical times. Some ancient cultures would send an innocent goat into the wilderness after having symbolically laid the sins of the community upon its back.

Gary is an innocent scapegoat. He is being unfairly blamed for the crimes of others.

Now, in the government's opening you heard about a lot of terrible and crooked things that happened after the stock was issued. Jason Galanis illegally got control of the stock, investment advisers were bribed, corrupt brokers engaged in matched trading to pump up the price of the stock. Jason Galanis and his family sold the stock and got away with tens of millions of dollars of illegal profits. And innocent investors, people who had worked hard their entire life, lost a lot of money.

These were the crimes of Jason Galanis and his family. Just like the other professionals at Gerova, Gary was duped, deceived and cheated by the smooth-talking and charismatic Jason. Gary had no inkling about the scheme that Jason had cooked up to get around securities laws. He didn't know about the matched trading, the plan to sell shares or the whole manipulation of the market. You're not going to hear evidence of the brokers communicating, these brokers communicating with Gary Hirst. And he didn't know about the investors who were forced to acquire the Gerova stock and lost money.

And importantly, very importantly, Gary did not get $2.6 million. That money went to the company owned and controlled by the government's very own cooperating witness. The truth is that Gary lost money. While Jason Galanis and his family were bribing investment advisers, manipulating the market and making their fortune, Gary was trying to put money back into the company. He held on to his shares. And just like the investors that you're going to hear about from the government, Gary lost money.

So this case, as I said, is about what was in Gary

Hirst's head when he signed those two documents. Two documents that he believed were perfectly legitimate, cost-effective ways for the company to satisfy its obligations to pay a $2.2 million finder's fee, documents that you're going to hear were not backdated and appeared legitimate and were ratified by the board of directors.

So why are we here? We are here in part because the government is complaining supposedly about what Gary did not do. They are going to say, and they did say in opening, that Gary didn't tell the board of directors in advance about the share issuance. Gary didn't tell his CFO. And somehow this means that Gary knew or must have known that the warrant agreement was a fake, a fraud, a secret way to get Jason Galanis shares. But Gary never hid anything.

First, you're going to hear there was no rule, no practice, no expectation that Gerova's board of directors had to have advanced notice of a share issuance. Around this time there were lots of other share issuances going on. A lot of people were entitled to stock. And many of those share issuances -- most of them -- got approved by the board of directors after they were actually issued. It's totally irrelevant that Gary did not get board approval before he signed the warrant agreement and before he signed the letter issuing the shares. It just doesn't matter.

But even if somehow Gary had wanted to hide the warrant agreement and the share issuance, it would have been impossible. You're going to hear that when share issuances happen, the company has to write a letter to an entity called a stock transfer company. That's the company that actually has to give someone the shares. And when the stock transfer company gets a request to issue shares, it has to record those new shares on the register for the company. It keeps that company register and makes sure that it's always updated.

It also keeps a copy of the letter that it receives from the company authorizing the share issuance. And you will hear and see that copies of this register were circulated within Gerova and available to all. So the total number of shares issued and tradeable, including these shares issued to Shahini, were right there for the CFO, the auditors, and the lawyers to see.

But more importantly, no matter what the witnesses are going to say in that witness box, the paper record will show that Gary did tell people about the Shahini warrants and the Shahini shares. He did tell the CFO. He passed along to him everything he needed to know to make sure that the public disclosures were accurate.

And even if there are now complaints about the language that ended up in those official filings -- you will hear about a Form 20-F, the draft form F-1, letters to the stock exchange -- that wasn't Gary's fault. He gave everyone the information they needed to make sure the disclosures filed with the SEC and the stock exchange were accurate.

(Continued on next page)

MS. HARRIS: (Continued) Now, in 2010, the government witnesses themselves, people who are going to come here, Mr. Hlavsa, the CFO, Mr. Halalc, a board member, they didn't think there anything was wrong then. As I said, they ratified these very transactions at a board meeting several months later, even when the government has to concede that all the relevant facts were before them.

They knew about Jason Galanis. They knew about his problem with the government. But they had been told that Jason Galanis had been entitled to a finder's fee, and they had been told and all thought that he had transferred that fee to somebody else. No matter what they say now, that's exactly what they wrote and explained in a letter to the New York Stock Exchange. Maybe the explanation was inartful or poorly written, but that's what they all thought happened in 2010, and they didn't think there was any problem with it then.

But we're here today because today those individuals, those professionals, Mr. Hlavsa, the CFO, Mr. Manley, who was briefly the CEO, and Mr. Doueck, they're all scared. They're scared because they were part of this company. They made money. And they're scared because of what happened after the shares were issued when real criminals -- Jason Galanis, Gavin Hamels and Albert Halalc -- cheated and defrauded innocent investors, and those innocent investors lost a lot of money. Because of that, the government witnesses, and especially the

CFO, they're desperate for this problem to be someone else's problem, someone else's fault.

They will sit in that chair and try to suggest to you, they didn't have all the facts in front of them. That maybe if they had known everything, they might have done something differently. Or they might suggest they don't remember anything at all. They're going to play the blame game. They're going to make Gary the scapegoat, because otherwise, the government might unfairly accuse them of a crime, too.

Gary Hirst is being unfairly blamed for the crimes of others. He is the scapegoat, the patsy, the fall guy. He is bearing the sins of Jason Galanis, the sins of Gerova. But our criminal justice system has moved beyond ancient times. We don't assign blame to innocent creatures, we don't hold innocent men responsible just because it's expedient, because it's easy, or convenient, or because it makes us feel good. In our country, we assign blame only when the facts justify it, and only when there's proof beyond a reasonable doubt. Here, there is no proof to assign the blame to Gary Hirst. There certainly isn't proof beyond a reasonable doubt.

As you listen to the evidence, keep in mind that central question that I set out at the beginning. What was in Gary Hirst's head when he signed these two documents? If you keep that question in mind, at the close of trial there will be only one verdict consistent with the evidence, and that's a verdict of not guilty. Thank you.

THE COURT: Thank you, Ms. Harris.

We're going to take our mid-morning break, but I wanted to give you one instruction which you should have at the outset.

You may not draw any inference favorable or unfavorable from the fact that any person in addition to the defendant is not on trial here. You also may not speculate as to the reasons why other persons are not on trial. Those matters are wholly outside your concern and have no bearing on your function as jurors.

We'll take our break. And remember, ladies and gentlemen, do not discuss the case among yourselves or with anyone. Keep an open mind. After a short break, we'll begin with the first trial witness. Thank you.

(Jury not present)

THE COURT: See you in 10 minutes.

(Recess)

(Jury present)

THE COURT: Please be seated except for the witness, who should remain standing.

You may call your witness.

MS. HECTOR: May the government begin by reading a stipulation?

THE COURT: Sir, you may be seated.

Go ahead. Is this a stipulation of fact or testimony?

MS. HECTOR: It's a stipulation on the admissibility of certain exhibits.

THE COURT: All right. Let me hear your stipulation.

MS. HECTOR: United States of America versus Gary Hirst. It is hereby stipulated and agreed by and among the United States of America by Preet Bharara, the United States Attorney for the Southern District of New York, Brian Blais, Amy Hector, and Rebecca Mermelstein, Assistant United States Attorneys, of counsel, and Gary Hirst, the defendant, by and with the consent of his attorneys, Michael Tremonte and Justine Harris that, one, Government's Exhibits 200 to 201, 201A, 202, 210 to 216, 218 to 223, 225 to 226, 241 to 242, 242A, 243 to 244, 245A, 245B, 250 to 251, and 601 to 615 are true and correct copies of records that were created, kept, and maintained in the ordinary course of business of Gerova Financial Group, and were created by persons with knowledge of or created from information transmitted by persons with knowledge of the information shown, and were created at or near the time the information became available.

Two. Government Exhibit 530 is a true and correct copy of a record that was created, kept, and maintained in the ordinary course of business of Tag Virgin Islands, Inc., and was created by person with knowledge of, or created with information transmitted by persons with knowledge of the information shown, and were created at or near the time the information became available.

Three. Government's Exhibits 540 to 548 are true and correct copies of records that were created, kept, and maintained in the ordinary of course of business of Weston Capital Management, and were created by persons with knowledge of or created with information transmitted by persons with knowledge of the information shown, and were created at or near the time the information became available.

Four. Government's Exhibits 550 through 593 are true and correct copies of records that were created, kept, and maintained in the ordinary course of business of the American Stock Exchange and the New York Stock Exchange, and were created by persons with knowledge of or created with information transmitted by person with knowledge of the information shown, and were created at or near the time the information became available.

Five. Government's Exhibit 640 is a true and correct copy of a record that was created, kept, and maintained in the ordinary course of business of RothStein Kass & Company, PC, and was created by persons with knowledge of or created from information transmitted by persons with knowledge of the information shown, and was created at or near the time the information became available.

Six. Government's Exhibits 680 through 682 are true and correct copies of records that were created, kept, and maintained in the ordinary course of business of Martin Kelly Capital, and were created by persons with knowledge of or created from information transmitted by persons with knowledge of the information shown, and were created at or near the time the information became available.

It is further stipulated and agreed by and among the parties that this stipulation and the government's exhibits set forth herein are admissible as government's exhibits at trial, signed by the parties.

The government now moves for the admission of this exhibit, the stipulation, and --

THE COURT: What exhibit number is it?

MS. HECTOR: The stipulation is Government's Exhibit 1513.

THE COURT: All right. So you're moving only for the admissibility of the stipulation?

MS. HECTOR: The stipulation and the government's exhibits mentioned herein.

THE COURT: All right.

Any objection?

MR. BIALE: No objection, your Honor.

THE COURT: Received.

MS. HECTOR: Thank you, your Honor.

(Government's Exhibits 200 to 201, 201A, 202, 210 to 216, 218 to 223, 225 to 226, 241 to 242, 242A, 243 to 244, 245A, 245B, 250 to 251, 530, 540 to 548, 550 to 593, 601 to 615, 640, 680 to 682 and 1513 received in evidence)

THE COURT: Ladies and gentlemen, a stipulation of fact is an agreement by the parties that a certain fact is true. That fact must be accepted by you as having been established. However, the weight, if any, to be given to that fact, the importance or significance, or lack of importance or lack of significance, of that fact is entirely for you, the members of the jury, to consider.

You may now call your witness.

MS. MERMELSTEIN: Thank you, your Honor. The government calls Mr. Jack Doueck.

JACK DOUECK,

called as a witness by the Government,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell it for the record, please.

THE WITNESS: Jack Doueck. J-a-c-k, D, as in David, o-u-e-c-k.

THE COURT: You may inquire.

MS. MERMELSTEIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. MERMELSTEIN:

Q. Good afternoon, Mr. Doueck. How old are you?
A. 53.
Q. Let me ask you, since the courtroom is big, if you can keep your voice up.
What is your educational background?
A. I graduated college and some of graduate school.
Q. What year did you graduate college?
A. 1985.
THE COURT: One second. Ladies and gentlemen, once upon a time courtrooms didn't have microphones and it worked pretty well.
THE WITNESS: I can speak up.
THE COURT: If you don't mind, keep your voice up as loud as you can. Anyway, go ahead.
BY MS. MERMELSTEIN:
Q. So I'll try to be loud and you try to be loud.
What year did you graduate college?
A. 1985.
Q. What year did you finish graduate school?
A. 1986.
Q. Can you briefly describe your professional background in the years following college and graduate school?
A. First, I was in computers, a computer programmer, and then I joined a mid-sized retail company, and then I started a money management firm.

THE COURT: When you say "retail company", the jury doesn't know what you're talking about. I think of Macy's when I think of a retail company. Is that what you mean?

THE WITNESS: Yes.

THE COURT: What were you retailing?

THE WITNESS: It was an apparel and hard goods New York retailing stores.

THE COURT: That's fine. Go ahead.

Q. What was the name of that company?

A. Conway Stores.

Q. What role did you have at the company?

A. I was in operations. At one point I was the chief operating officer.

Q. Did there come a time that you left Conway?

A. Yes.

Q. Approximately when was that?

A. The end of 1996.

Q. What did you do at that point?

A. I started a money management organization.

Q. Who did you start it with?

A. Richard Rudy.

Q. What was the name of the money management organization?

A. It was called Stillwater Capital Partners.

Q. When you say a money management organization, what did Stillwater Capital Partners do when you started it in about

1996?
A. We started it in the beginning of 1997.
Q. Apologize.
A. And what we did was something called a fund of funds.
Q. What is a fund of funds?
A. It's a fund of a diversified portfolio of underlying funds.
Q. So it invests in different kinds of funds?
A. Yes, exactly.
Q. And are those often hedge funds?
A. Yes.
Q. Did you invest your own money in Stillwater Capital?
A. Yes.
Q. What about friends and family?
A. Yes.
Q. When you earned profits from the business, did you typically take that money out or reinvest it in the company?
A. Vast majority reinvested.
Q. Let's jump ahead to about 10 years after you started the company to about 2008. Had Stillwater's business expanded beyond the fund of funds by that time?
A. Yes.
Q. What were some of Stillwater's other business endeavors?
A. Stillwater had three categories of investments; the funds of funds was one, the second was a loan fund, and the third was a real estate fund.

Q. Let's talk about the asset, the loan fund for a moment. Did that have a formal name?
A. Yes. It was called the Stillwater Asset-Backed Fund.
Q. What is that?
A. The asset-backed fund made loans and investments in types of loans on different types of assets like real estate, insurance, and other types of loans like that.
Q. How did Stillwater make money from making loans?
A. Similar to a bank, I would say, we would make interest on our money that we invested.
Q. What about the real estate fund? What did that do?
A. That was equity investments in developments and distressed real estate.
Q. What does that mean in regular person terms?
A. Somebody wants to build a condominium, we provided some capital for that.
Q. By 2009, what were Stillwater's total assets of management? How much money was it managing in all of its endeavors?
A. It was about a billion dollars.

THE COURT: Pause.

(Pause)

THE COURT: Go ahead.

MS. MERMELSTEIN: Thank you, your Honor.

BY MS. MERMELSTEIN:
Q. So in 2009, you said the total assets under management was

approximately a billion dollars. Approximately how much of that was yours and your partners?
A. About 40 million.
Q. What happened to Stillwater in 2009?
A. In 2009, there was a financial crisis and liquidity crisis, so what it meant to us was that our borrowers, most of our borrowers, couldn't pay us back, and at the same time, our investors needed their money back.
Q. When you say a "liquidity crisis", what's "liquidity"?
A. Liquidity, simple word would be cash. There was not enough cash to go around. Banks were being foreclosed.
Q. How did that problem affect Stillwater?
A. So on one hand our loans, we could not retrieve the value of our loans back from borrowers who couldn't afford to pay us back and nowhere to go to give us the money, and on the other side of the coin, our investors were getting margin calls and they needed to redeem out of our fund. That was how it affected the loan, the asset-backed fund.
Q. And when you say a margin call --
A. A lot of investors in those days would borrow money to invest in funds like ours.
Q. So whoever made them the loan wants the money back and it's sort of a trickledown effect.
A. Exactly.
Q. What did you do in response to this problem?

A. So I personally traveled the world to meet with institutional, large, huge potential investors and clients, show them our portfolio, showed them and asked them for liquidity or investments to basically save us.
Q. Were you successful in those endeavors?
A. Ultimately, no.
Q. Are you familiar with an individual named Jason Huntley?
A. Yes.
Q. How do you know him?
A. Jason Huntley was a registered investment advisor who had a few of his clients invested in our funds.
Q. What is a registered investment advisor?
A. Money manager.
Q. So he had clients whose money was invested with you?
A. Correct.
Q. Did there come a time that you discussed Stillwater's liquidity problems with Jason Huntley?
A. Yes.
Q. What, if anything, did he suggest?
A. He suggested that I meet a friend of his who had a public company that needed to buy assets that would be a potential solution for us.
Q. Who was the friend?
A. Jason Galanis.
Q. Did there come a time that you in fact met with Jason

Galanis?
A. Yes.
Q. When was that, approximately?
A. November of 2009.
Q. Where did that meeting take place?
A. In our conference room at 41 Madison Avenue.
Q. "Ours", meaning Stillwater's?
A. Yes.
Q. Who else was in that meeting?
A. Gary Hirst, Joe Bianco, Noah Hammond, and a number of other people that I forget.
Q. All right. Let's start with Gary Hirst. Do you see Gary Hirst sitting in the courtroom today?
A. Yes.
Q. Can you please point him out to the jury and identify an item of clothing he's wearing?
A. Gary looks like he's wearing a dark gray suit sitting to the left of the woman with the blond hair.
THE COURT: Front table? Back table?
THE WITNESS: Second table.
THE COURT: All right. Identification noted.
Q. Then let me turn your attention to what's already in front of you as Government's Exhibit 100 for identification. Do you recognize that?
MS. MERMELSTEIN: Let's take that down. Sorry. Brief

technical problem. Can we take that down, please. Okay. Let me just direct Mr. Doueck for a moment to the hard copy of Government's Exhibit 100.

A. 101 maybe?

Q. Is it 101?

A. Yes.

Q. 101 in front of you. Do you recognize that?

A. Yes.

Q. What is it?

A. It's a picture of Jason Galanis.

Q. Does that accurately depict what he looks like?

A. Yes.

MS. MERMELSTEIN: The government offers Government's Exhibit 101.

THE COURT: Any objection?

MR. BIALE: No objection.

THE COURT: Received.

(Government's Exhibit 101 received in evidence)

MS. MERMELSTEIN: While we're solving the technical difficulties, let's go back to the meeting. Okay, we've got it. Thanks, *Ms. Sheinwald.

Q. Who ran the meeting with Jason Galanis and the other people you've just named?

A. Jason Galanis and Gary Hirst.

Q. What was the proposal being discussed in that meeting?

A. The proposal was that --

MR. BIALE: Objection, hearsay.

THE COURT: Sustained.

MS. MERMELSTEIN: Your Honor, I think that the statements by Jason Galanis about a proposed transaction are statements in furtherance of a conspiracy.

THE COURT: When was the statement made?

THE WITNESS: During the meeting in November.

THE COURT: When was the meeting?

THE WITNESS: November, 2009.

THE COURT: One second. I'll allow it. Go ahead.

MR. BIALE: Your Honor, may we approach on this?

THE COURT: Sure.

One second, ladies and gentlemen. You can stand up and stretch.

I'll see you at the sidebar.

(Continued on next page)

(At sidebar)

MR. BIALE: The Stillwater transaction is separate from the Weston transaction which they are going to argue is part of the conspiracy, so not all statements made at the meeting by Galanis or Hirst are in furtherance of the conspiracy.

THE COURT: Understood. You don't urge that all statements made at the meeting were in furtherance of the conspiracy?

MS. MERMELSTEIN: No, your Honor. But I think that understanding how Gerova, the entity that was manipulated for the fraud, came to be formed and how it acquired its assets, understanding how the SPAC worked and how it was formed and how the transaction purportedly made sense is all a fundamental part of the conspiracy, and this is a witness who can educate the jury on that. If you want to offer the statements not for their truth but simply to show how it is that he ended up in business with them, that's also a basis to do it. But I think that Jason Galanis' statement encouraging people with liquid assets to sell those assets to Gerova for shares of Gerova stock is 100 percent a statement in furtherance of the conspiracy.

THE COURT: Well, okay. I'm guessing you both know what was said at the meeting. Okay? I don't have a clue. Just back up.

MR. TREMONTE: We don't know.

THE COURT: All right. So you don't know, either. You know, I don't.

MS. MERMELSTEIN: I do.

THE COURT: There are statements during and in furtherance of a conspiracy that are admissible. You need to break down your question so we can find out whether or not this is a statement that's during and in furtherance of the conspiracy or something somewhat different. The background of the conspiracy, how the conspirators came to know one another or what they were doing, even on the eve of the conspiracy, so as to understand the conspiracy, which are not statements during the conspiracy, in furtherance of the conspiracy, and then there may be something else which is neither of those. I can't tell from the question what's coming, so you have to break that down.

Background of the conspiracy, the government is able to offer evidence to show what kind of business the coconspirators were in, how they came to know one another, for example.

MR. BIALE: But your Honor, we're objecting to hearsay testimony about the background of the conspiracy. The background I understand may be relevant, but that doesn't solve the hearsay problem.

THE COURT: If offered by this witness.

MS. MERMELSTEIN: Let me proffer what the witness is going to say, which is, I expect this witness will say that Jason Galanis and Gary Hirst proposed a transaction in which the SPAC, then called ASSAC, would purchase Stillwater's illiquid assets in return for shares of a company to be formed, Gerova. He will explain how that made business sense, that is, in what fashion that was a good situation for Stillwater and in what fashion that made sense for the SPAC, and that they then entered into, in fact, such a transaction.

Certainly, he can testify that he entered into the transaction. I think it's helpful to understand how it came to be that it was proposed and who proposed it. I don't think that that testimony itself is being offered for the truth that the transaction happened -- in fact, he'll just be able to say then the transaction happened -- but it's confusing to just say "then we did it" without explaining how they came to do it. And I think given Jason Galanis and Gary Hirst's plans for what to do with this company, inducing someone in distress to enter into this transaction, is in furtherance of the conspiracy. So I think it's admissible on both grounds.

THE COURT: In order for the statements of Galanis to be admissible, they must be during and in furtherance of the conspiracy. Now, I'm trying to get this sorted out here. Are you offering the statements by Galanis as statements by a conspirator during and in furtherance of the conspiracy?

MS. MERMELSTEIN: Yes.

THE COURT: What's the basis for the objection?

MR. TREMONTE: It's difficult to imagine if "in furtherance of the conspiracy" extends back to this conversation proposing the Stillwater transaction, then it's no exaggeration to say that it extends all the way back to the first time that Gary Hirst and Jason Galanis met. This is very far afield.

THE COURT: Is it outside the temporal scope of the conspiracy?

MS. MERMELSTEIN: No.

MR. TREMONTE: It is where there are a great many things --

THE COURT: It is or --

MR. TREMONTE: No, it's inside the --

THE COURT: Flo, can you turn on the white noise, please? Thank you.

MR. TREMONTE: The proposal to do this deal and for ASSAC to acquire the assets has nothing to do with the charged crime. It's very, very distant, causally related, but it's so attenuated that to suggest that it's in furtherance of the conspiracy would, in effect, draw in basically everything that these people were doing.

MS. MERMELSTEIN: I don't think it's attenuated in any fashion. First, the purpose of the deal was to get liquidity to Stillwater. In fact, this witness will testify Gerova didn't have that liquidity, and then proceeded to take cash out of Stillwater, first.

Second, there are email communications between Ymer Shahini, the strawman, and other members of the conspiracy in which Shahini is confused about which introduction he is meant to have made, and says Stillwater, when he means Weston, has evidence when in fact he has no idea, period, which one is which.

So I think that the story is integral on how Gerova came to be formed as an integral part of the conspiracy, and I think that Jason Galanis' statements soliciting this transaction are in furtherance of the conspiracy.

I also think that those statements, as a third basis for admissibility, that Jason Galanis proposed something is not being offered for its truth, it's being offered for the fact that he proposed it. This witness will then say what in fact happened. But I think that it's admissible on all of these bases.

THE COURT: Well, when you mush together something that's admissible for the truth of its content with admissible for the fact that it was said, I think you're mushing your arguments and there's a lack of clarity.

If you want to offer it for the truth of its content, then I will rule, and if I sustain an objection, you can try alternatively. Or if you want to withdraw your offer for the truth of its content and want to offer it only for the fact that it was said, then I will rule on that.

MS. MERMELSTEIN: I apologize.

THE COURT: I don't rule on a mush. I'm sorry.

MS. MERMELSTEIN: I meant to simply give alternative bases, but the first answer is the government is offering it for its truth.

THE COURT: All right.

MR. TREMONTE: Can we propose, if it's important for the transaction to come in, I don't know why he can't just testify that the transaction was proposed and what happened without the hearsay statements, and then you've got your background.

MS. MERMELSTEIN: I think, among other things, who proposed it is significant. I think who proposed it is significant. And if you concede that the transaction is admissible, I don't see what the problem with asking him how it got started is.

THE COURT: This is actually a common circumstance in a conspiracy trial.

Prima facie, the government has made out a plausible case that it is a statement by a conspirator in furtherance of the conspiracy, and I will allow you to explore on that basis, but I reserve the right to strike, as I do with all such statements.

MR. BIALE: Your Honor, just in addition, to the extent they are going to suggest that there was something improper about inducing someone in a desperate position to engage in this Stillwater transaction, which is not a transaction that is charged in the indictment, it's improper propensity evidence, and it was not noticed.

THE COURT: It's not propensity evidence if it's a statement in furtherance of the charged conspiracy. It can't be propensity evidence there. It either is in furtherance of the charged conspiracy or it's not. If it's not, then maybe you have an argument. But you don't have an argument if it's a statement in furtherance of the conspiracy, which is where I am right now. Okay.

MR. TREMONTE: Please note the objection.

MS. HARRIS: Your Honor, if we could just ask the government, to the extent we're going to have these, that they not make the specific reference of statements in furtherance of the conspiracy before the jury.

THE COURT: I'm not going to --

MS. HARRIS: Before we approached, they did offer the basis. I'm just asking --

THE COURT: I'm not going to worry so much about a statement about the admissibility. If there's extended argument, that's a different story, but a mere reference -- the jury has been told by me six times, I think, that this is a case about a conspiracy. That's what the charge is.

MR. TREMONTE: Thank you.

(Continued on next page)

(In open court).

THE COURT: Why don't you restate the question.

MS. MERMELSTEIN: Thank you, your Honor.

BY MS. MERMELSTEIN:

Q. What was the transaction being proposed in the meeting with Jason Galanis, Gary Hirst, and others?

A. The transaction was that this company that was called a SPAC, a special purpose acquisition company, was going to purchase the Stillwater assets and provide them with needed cash that the assets needed, and at the same time in exchange for those assets offer our investors who wanted liquidity shares of a public company so that they can sell those shares potentially at their will and have the liquidity they needed.

Q. Let's break that down. First, you mentioned a SPAC. What is a SPAC?

A. A special purpose acquisition company. I was told at the time that it was a company that had to purchase an asset in order to actually deSPAC or go public, become a public stock.

Q. What would happen to the SPAC after it purchased Stillwater's assets?

A. My understanding was -- I wasn't a securities person, but my understanding was that it would be a public company at that point with registered and freely traded stock.

Q. And the Stillwater investors would be given shares of that stock.

A. Exactly.

MR. BIALE: Objection, leading.

THE COURT: Refrain from leading.

Q. What was the benefit of Stillwater in that transaction?

A. So there were two benefits. Number one, the assets -- the assets, meaning the loans and et cetera, needed cash, and that the company claimed to have $115 million of cash, and so that would protect our assets. And number two, our investors would have a path towards getting their investments back if they wanted it.

Q. When you say your loans needed cash, what do you mean by that?

A. So to give an example, many examples, but one example could be, we lend money to a company that purchased life insurance policies, and we would pay -- the loan would pay the premiums of the life insurance policies until the person would pass away, at which point the life insurance will pay us back. So if we don't have the money -- we need the money to pay the premiums for the life insurance policies; otherwise, they lapse.

Q. And you lose your investment.

A. Exactly.

Q. At the time that these discussions were going on, had Stillwater received an inquiry from the SEC?

A. Yes.

Q. Did you disclose that to the SPAC people you were talking to about the SPAC?
A. Yes.
Q. What was the result of that SEC inquiry?
A. In December of 2010, they sent us a no action letter, that they're not going to continue it.
Q. Meaning the inquiry was closed.
A. Exactly.
Q. Did you ultimately agree to the transaction with the SPAC?
A. Yes.
Q. How was it structured?
A. Well, like I said, the structure was supposed to be that the public company or the SPAC would get -- in a transfer would get the assets that we had in exchange for our investors, our stakeholders getting shares of their company.
Q. What was the new company going to be called?
A. Gerova Financial Group.
Q. Were the shares that the Stillwater investors were to receive to be restricted or unrestricted?
A. Restricted.
Q. What does that mean?
A. It means we couldn't trade them.
Q. For how long?
A. My understanding was that we weren't going to be allowed to trade them until the summer or July, August of 2010.

Q. How would the number of shares being received by Stillwater investors be determined?
A. So it was an exchange. Right? It was an asset purchase. So therefore, the number of shares, which was set at that time I believe at $7.50 per share, would be traded for the value of the assets. So if the assets were worth, let's just say theoretically, $750, then we would get 100 shares. So $7.50 per share.
Q. Let's talk with regard to each of the Stillwater funds at issue in the transaction about how the assets were valued. So first, on the fund of funds, how were Stillwater's assets to be valued?
A. So the fund of funds had investments in underlying funds that many of which were underwater and going through suspensions and liquidity crisis. So before we made the deal with Gerova, during the discussions, what they offered -- I was at one point saying don't even put them in the deal because we don't have an exact value for them, and then they said, no, we want to buy the fund of funds with a minimum --
MR. BIALE: Objection, your Honor. He's testifying to hearsay.
THE COURT: Pause. Put a new question to the witness.
Q. Let me redirect you, Mr. Doueck.
In terms of the valuation of the fund of funds, what was the ultimate agreement about how they would be valued?

A. A minimum value of 75 percent of our carrying value, of the estimated value of the funds.
Q. Just so we're clear, what's carrying value?
A. It was the estimated mid-asset value of the portfolio of underlying funds that we had.
Q. What about the real estate fund? How was that going to be valued?
A. That would be valued with appraisals of the real estate assets, the assets we had in the fund, the real estate assets.
Q. What about the loan fund?
A. The asset-backed fund? In the Fall of 2009, we had done a -- Houlihan had done an valuation of the assets, and we picked the mid-point of that valuation, so they had a minimum value and a maximum, we picked the mid-point, and we went with the mid-point of that, subject to the audit which would come sometime in 2010.
Q. So were the final number of shares to be given to Stillwater actually determined at the time of the transaction or was there going to be a final determination later?
MR. BIALE: Objection.
THE COURT: Rephrase it.
Q. At what point in time would the exact number of shares to be given to Stillwater investors be determined?
A. So the estimate would be at the time of the closing, but the final would be after the audit was -- after we got the

audit from our auditors.
Q. Was there ever a final unqualified audit done with regards to those assets?
A. None.
Q. What, if any, fees were you or your partner entitled to in connection with this transaction?
A. We were entitled to 2 percent of the asset value of the transaction.
Q. Did you ever collect those fees?
A. No.
Q. What, if anything, did Jason Huntley receive for making the introduction that led to the transaction?
A. I don't know.
Q. Did you participate in any conversations about the possibility of him receiving fees?
A. Originally, I did, yes.
Q. Do you know what ultimately happened with that?
A. I actually don't.
Q. What about Jason Galanis? Was he compensated in some fashion for the transaction?
A. I didn't think he was, no.
Q. Prior to the consummation of the transaction, what, if anything, did you know about Jason Galanis' ability to serve as an officer or director of a public company?
A. I was told that he had a ban and wasn't allowed to.

Q. Did that concern you?
A. Yes.
Q. What about it concerned you?
A. Well, there are two concerns that I had. One was if he's going to serve, if he's going to be serving, then I'm going to be party to a company that's illegal. That was one concern. The other one was --
MR. BIALE: Objection, foundation, your Honor.
THE COURT: Overruled.
THE WITNESS: -- the second concern was that he had something in his background that was not pretty, so it was a concern for us.
Q. What did you understand Jason Galanis' role in the company would be following the consummation of the transaction?
A. I was told by Steve Weiss, the --
MR. BIALE: Objection.
THE COURT: No. This is not for the truth of its content. You're not offering it for that purpose.
MS. MERMELSTEIN: No, your Honor.
THE COURT: Ladies and gentlemen, this is for the fact that it was said, not whether the statement that was given to him was, in fact, what was going to happen or was the truth, but this is what he was told by someone.
Go ahead. You can answer.
THE WITNESS: So I was told that he would be like more

of a broker, investment banker, bringing deals to the company for the company to do.
Q. Did you ultimately go forward with the transaction?
A. Yes.
Q. What made you decide to do it?
A. It was a business decision. The downsides -- the upsides of the deal were far outweighed the potential downside.
Q. Did Gerova acquire other similar liquid assets like Stillwater?
A. Yes.
Q. Which ones?
A. The Wimbledon Fund, which is a fund of funds like ours, and a reinsurance company in Bermuda.
Q. Who was the principal of the Wimbledon Fund?
A. Albert Halalc.
Q. And what was your understanding of who introduced Gerova to the Wimbleton introduction?
MR. BIALE: Objection, foundation.
THE COURT: Rephrase the question.
Q. Did you come to have an understanding -- withdrawn.
Let's turn to the time period after the SPAC had acquired Stillwater and become Gerova. Who ran Gerova?
A. Well, Gerova had a board of directors. The chairman was Gary Hirst, so I would say Gary ran Gerova.
Q. You mentioned a board of directors. Who else was on the

board?
A. There was gentleman by the name of Michael Hlavsa, who I think was the CFO, chief financial officer, there were other board members. There was a man from Canada. His name was Keith Laslop, and a few other of Gary's -- what I assumed to be Gary's friends.
Q. You say that you assume that, based on what?
A. Just conversation. Just, I was at the board meetings, and as a board member, and I would notice that the other board members were friendly with each other.
Q. You mentioned you were a board member. How did you come to be on the board?
A. So part of the deal we made was that they would allow one person from Stillwater to serve on the board to watch what they were doing, I guess.
Q. What, if anything, did you observe about the interactions between the other members of the board?
A. So it was like a club. Gary was the leader of the club, and I was kind of an outsider.
Q. What do you mean by you were an outsider?
A. Well, they had my assets, they had all our capital, and they were -- the other board members were all part of a -- looked like they were part of a team. And like I said, I wasn't really -- I was always a -- I always felt like I was a hostage.

MR. BIALE: Objection.
THE COURT: Basis.
MR. BIALE: Foundation.
THE COURT: Overruled.
Q. Did you get paid for being a member of the board?
A. No.
Q. What about the other board members of the board? Did they get paid?
A. I believe they did.
MR. BIALE: Objection, foundation.
THE COURT: What was your basis for your belief, sir?
THE WITNESS: Financial statements.
THE COURT: Okay. Overruled.
Q. Did you know from Gerova's documents how much they got paid?
A. I don't know exactly. I think tens of thousands of dollars each.
Q. What about Gary Hirst? Did he get paid?
A. I believe so, yes.
Q. And approximately how much was he paid?
A. It was -- I don't know exact number, but probably hundreds --
MR. BIALE: Objection, speculation.
THE COURT: Wait a minute.
THE WITNESS: Sorry.

THE COURT: If a witness says they don't know the exact number, it makes their testimony speculation. Overruled.

Do you have a basis to estimate?

THE WITNESS: Yes.

THE COURT: Okay. Go ahead.

THE WITNESS: Hundreds of thousands of dollars.

Q. What were the board's responsibilities?

A. I wasn't a securities lawyer, but I understood the board's responsibilities to be to approve transactions, mergers, acquisitions, et cetera.

Q. What, if any, responsibilities did the board have for approving agreements entered into by the company?

A. I would imagine -- I thought the board --

MR. BIALE: Objection, foundation.

THE COURT: Well, not what you imagined, but what your -- you can testify if it was your understanding. If you're imagining, you can't testify to what you're imagining. Do you understand?

THE WITNESS: Yes.

THE COURT: So are you imagining or are you recalling?

THE WITNESS: I'm recalling.

THE COURT: Okay. You may testify.

THE WITNESS: Care to repeat the question, please?

Q. Of course. What was your understanding of the board's responsibilities with regard to approving agreements entered

into by Gerova?
A. My understanding was that the board had to approve them.
Q. Would that include consulting agreements?
A. Yes.
Q. Now, did you ever review bylaws or other written documents laying out the rules governing the board?
A. No.
Q. Were you aware of whether or not Gerova had such rules?
A. No.
Q. How often did the board meet?
A. About once a month.
Q. And was that in person or some other way?
A. Part of the meeting was partially in person with -- almost always there were outside board members that called in on a conference line.
Q. Let me actually back up a moment. What was your understanding about whether or not the board had to authorize shares being issued by the company?
A. I'm sorry. Could you repeat the question?
Q. Sure. Backing up to the obligations of the board. What was your understanding of whether the board had to authorize the issuance of shares?
MR. BIALE: Objection, foundation. Did he have an understanding?
THE COURT: Did you have an understanding?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q. You can answer, Mr. Doueck.

A. I assumed the board, and I understood that the board would have to authorize shares given to anybody.

MR. BIALE: Objection.

THE COURT: Basis.

MR. BIALE: Foundation. He assumed.

THE COURT: What was the basis for your understanding?

THE WITNESS: As a board member, I was a board member of other -- of other organizations before, and that would be a typical -- something typical that a board would do.

THE COURT: Thank you.

THE WITNESS: It wasn't based on reading bylaws, that's all.

THE COURT: Next question.

Q. Let's move back to the board meetings. You were saying -- I asked you if they met in person or another way, and you were explaining.

A. Yes. The board would -- there would be some people meeting in person, and then some people would be calling in over a conference line.

Q. Who prepared the agenda for those meetings?

A. Gary Hirst.

Q. Who ran the meetings?

A. Gary Hirst.

Q. What was his style of running the meetings?

MR. BIALE: Objection. 403 and 404.

THE COURT: Overruled.

Q. Go ahead, Mr. Doueck.

A. Gary was a bully. He ran the meeting -- it looked like it was all rehearsed and he ran according to his agenda very strictly.

THE COURT: Well, I'm going to strike everything other -- I'm going to strike the bully comment.

Disregard that, ladies and gentlemen.

The rest of the answer stands. Go ahead.

Q. Were your views in the meetings given consideration?

A. Not generally, no.

Q. Did anyone take notes at the meetings?

A. Yes.

Q. And were minutes prepared of the meetings following meetings?

A. Yes.

Q. Did you receive copies of those minutes following meetings?

A. Yes.

Q. And what was your general practice about whether you actually reviewed those?

A. Mostly, I didn't review them.

Q. What was Jason Galanis' role in the company after the

Stillwater acquisition?
A. Well, Jason would try to make -- help the company make acquisitions and mergers.
Q. Did he attend board meetings?
A. Yes.
Q. Was his role in the company after the consummation of the transaction consistent with what your understanding had been before the transaction?
A. It was much more than my initial understanding.
Q. Based on your observations in connection with your role as a board member, what was Jason Galanis and Hirst's relationship?
A. Very close friends, partners in other businesses.
Q. Are you familiar with someone named Marshall Manley?
A. Yes.
Q. Who is that?
A. Marshall was the initial CEO of the company.
Q. What was your opinion of him?
A. When I first met Marshall, I was not impressed very much.
Q. Did you express that view to anyone?
A. Yes.
Q. Who?
A. Jason Galanis.
Q. Let me turn your attention to April 7th of 2010. Did you participate in a board meeting on that date?

A. Yes. I think it was April 6th.

Q. Well, let's say this. Did you participate in a board meeting in April of 2010?

A. I'm sorry. I'm sorry. Take it back. I thought you said October. April 7th, yes.

Q. Who set up that meeting?

A. Jason Galanis and Gary Hirst.

Q. Where was it held?

A. It was at the Atlantis Hotel in the Bahamas.

Q. How did you get there?

A. A chartered plane.

Q. Was it your idea to charter a plane for the meeting?

A. No.

Q. What did you think of the fact that a plane had been chartered?

MR. BIALE: Objection.

THE COURT: Rephrase that.

Q. Did you have any concerns about the fact that a plane had been chartered?

A. Yes.

MR. BIALE: Objection, relevance.

THE COURT: Overruled.

Q. What were the concerns?

A. That the company was starving for money, and our assets needed money like we were promised, and why charter a plane

when we could just get into coach and take a plane like everyone else.
Q. Did you express that view at that time?
A. No.
Q. Why not?
A. I was an outsider, so anything I said really would be dismissed anyway, so I didn't see any point in it.
MR. BIALE: Objection.
THE COURT: Sustained. Stricken.
Q. Did you know in advance what the agenda for that meeting was?
A. Yes.
Q. How did you find out?
A. Jason told me. Jason Galanis told me.
Q. What was the agenda?
A. To fire Marshall Manley.
Q. Was Manley, in fact, fired at that meeting?
A. Yes.
Q. Were you involved in negotiating his firing or his severance?
A. No.
Q. Did the board address any other issues at that meeting?
A. After Marshall Manley was terminated, they actually sat down and had a meeting, and at that meeting there were other things that they did at the board meeting.

Q. What were they?
A. One of them is they hired -- right at that moment, they hired this gentleman by the name of Stewart Solomons to be the managing director or the interim CEO.
Q. How did you respond to that?
A. I was -- I objected. I stood up and I was outraged. I said, "We don't even know who this person is. We didn't do any due diligence. We need a background check." I asked Gary to hold off on that hire.
MR. BIALE: Objection.
THE COURT: Basis.
MR. BIALE: Hearsay.
THE COURT: Overruled.
Q. How did Gary respond?
A. Gary said, "Sit down, Jack."
MR. BIALE: Objection.
THE COURT: Overruled. It's for the fact that it was said, ladies and gentlemen.
THE WITNESS: Gary said, "Sit down, Jack," and he went ahead with the vote to install this gentleman as the new CEO that we had not even met yet.
Q. You mentioned earlier that part of the purpose of the Stillwater/Gerova transaction was to get cash to support Stillwater's assets. Did Stillwater get cash from Gerova?
A. No.

Q. Did Gerova ever take cash from Stillwater?
A. Yes.
Q. How did that happen?
A. Well, some of our assets were sold so they could use the money.
Q. Prior to getting ready to testify here today, had you ever heard of a person named Ymer Shahini?
A. No.
Q. Sitting here today, do you ever remember hearing that name?
A. No.
Q. Let me turn your attention to October 6th of 2010. Did you attend a board meeting on that date?
A. Yes.
Q. Any particular recollection of the events of that meeting?
A. No.
Q. Do you remember any discussion of the approval of warrants at that meeting?
A. No.
Q. Of ratifying the warrants that had already been issued.
MR. BIALE: Your Honor, asked and answered.
THE COURT: Overruled.
THE WITNESS: No.
Q. Warrants going to Ymer Shahini?
A. No.
Q. Let me show you what is in evidence as Government's

Exhibit 222, which is in front of you.

MS. MERMELSTEIN: Ms. Sheinwald, if we can pull that up for the jury, please?

Q. What are these?

A. These are minutes of that meeting, October 6th, 2010.

Q. Did you receive these minutes following the meeting?

A. Yes.

Q. Do you remember if you actually reviewed them?

A. I do remember that I did not review them.

Q. Okay.

MS. MERMELSTEIN: If we can turn, Ms. Sheinwald, to page 2, please. If we can highlight the section "Ratification of share issuances". Zoom in so the jurors can read it. Okay.

Q. According to this document, what warrants are being ratified?

MR. BIALE: Objection.

THE COURT: First of all, is this document in evidence?

MS. MERMELSTEIN: It is, your Honor. It came in through the stipulation.

THE COURT: It is what number?

MS. MERMELSTEIN: 222.

MR. BIALE: Your Honor, he says he has no memory of it. The document speaks for itself.

THE COURT: I'll allow the question. Go ahead.

MS. MERMELSTEIN: Thank you, your Honor.

Q. Mr. Doueck, if you could just read for the jury the first sentence of that section.

A. "Gary Hirst presented to the board of directors of the company the warrants and shares that have been issued in connection with settlement agreements with Tag Virgin Islands, Inc., Ymer Shahini, and Oxfords Group, LLC."

Q. Does this indicate how many warrants are being issued?

A. No.

MS. MERMELSTEIN: We can take that down, Ms. Sheinwald. Thank you.

Q. Were you aware that Ymer Shahini was entitled to more than 5 million shares as a result of that warrant issuance?

MR. BIALE: Objection.

THE COURT: Overruled.

THE WITNESS: No.

Q. Were you aware that the shares were unrestricted?

A. No.

Q. Would that have been important for you to know?

MR. BIALE: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

Q. Why?

A. Our Stillwater investors and stakeholders had their life savings and funds that were being transferred for shares of

Gerova. If anybody would get 5 million shares and our shares were not -- first of all, we didn't get the shares yet, and second of all, they weren't even allowed to be traded, even if we would have got them. If someone else would step in front of us and get 5 million shares, first of all, it dilutes what we have, obviously, and number two, they can trade the stock and do whatever they want before our investors can.

(Continued on next page)

Q. Would you have had the same concern about a smaller issuance of restricted stock?
A. No.
MR. BIALE: Objection.
THE COURT: Overruled.
Q. Let's jump to January of 2011. What, if anything, happened with regard to Gerova at that point?
A. In January 2011, there was an article that went around the world by a short seller named Dalrymple and that created a free-fall and the stock tanked.
Q. The article was negative?
A. Oh, very negative.
Q. What, if anything, did the article say about Jason Galanis?
MR. BIALE: Objection.
THE COURT: Ladies and gentlemen, this is not for the truth of its content, but the fact that it was said, because the fact that it was said may have influenced -- and I expect we will hear -- influenced certain actions of the witness.
Go ahead.
A. I am sorry. Can you repeat that?
Q. Of course.
What, if anything, did the article say about Jason Galanis?
A. I don't recall exactly. I haven't seen that article in a long time. But I remember it being very negative about him.

Q. Did it disclose his role in Gerova?
A. I think I remember it saying that he had a much wider role than he was allowed to.
Q. Did the report also concern other issues?
A. Yes.
Q. At the time, did you believe that Gerova was a legitimate company?
A. I did.
Q. How did you want to respond?
A. I actually wrote a 25-page rebuttal to all the arguments in that short seller's paper, and I brought it to the board to ask them to edit it and then get it out there so we can have a defense and so we can protect the value of the stock.

THE COURT: We will take our break at this point.

Ladies and gentlemen, this is time for our lunch break. Remember, do not discuss the case among yourselves or with anyone. Keep an open mind. We will see you back for a 2:00 start. So it would be appreciated if you got back a few minutes early so you can get through the security lines.

Thank you very much.

(Jury exits courtroom)

THE COURT: Have a very pleasant lunch.

(Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

THE COURT: Bring the jurors in, please.

(Jury present)

JACK DOUECK, resumed.

THE COURT: Please be seated.

Good afternoon, ladies and gentlemen. We are back at work.

Ms. Mermelstein, you may continue.

BY MS. MERMELSTEIN:

Q. Mr. Doueck, when we broke for lunch I think we were talking about a letter that you drafted in response to the Dalrymple report.

Did anyone else participate in drafting that letter with you?

A. Yes.

Q. Who was that?

A. Jason Galanis.

Q. Did you ever send the letter?

A. Send the letter where?

Q. Did you ever send it anywhere publicly?

A. No.

Q. What happened to Gerova following the Dalrymple report?

A. The stock went from about $30 to being de -- whatever it is called, declassified or deregistered, delisted, and it

eventually went to zero.
Q. When you say deregistered, delisted, what do you mean by that?
A. I think they were kicked off the New York Stock Exchange.
Q. At any time from the time that you entered into this deal until Gerova stock was removed from the stock exchange, did the shares belonging to the Stillwater investors ever become publicly tradeable?
A. No.
Q. Was there ever a time when you could have sold them?
A. No. There was never a time that we even got them.
Q. You never even received them?
A. No.
Q. What happened to the value of the Stillwater investors' investments over the course of the months following the Dalrymple report?
A. They went to zero.
Q. How much did you and your partner personally lose in connection with the decline to the stock?
A. About $40 million.

MS. MERMELSTEIN: No further questions.

THE COURT: You may cross-examine.

CROSS EXAMINATION

BY MR. BIALE:

Q. Good afternoon, Mr. Doueck.

You testified that you became involved in Gerova in 2009, correct?
A. No.
Q. You testified that in 2009 you met Jason Galanis?
A. Yes.
Q. I would like to show you what has been marked for identification as Defense Exhibit 208.
THE COURT: It should not be displayed to the jury yet; just to the witness. Then we will see where we go.
Go ahead.
Q. Do you see Exhibit 208, Mr. Doueck, on your screen?
A. Yes.
Q. Do you recognize that person?
A. Yes.
Q. Who is that person?
A. Jason Galanis.
MR. BIALE: We move to admit Exhibit 208 into evidence.
THE COURT: Any objection?
MS. MERMELSTEIN: No, your Honor.
THE COURT: Received.
(Defendant's Exhibit 208 received in evidence)
BY MR. BIALE:
Q. Now, you understood that Jason was a businessman, right?
A. Yes.

Q. He was known as somewhat of a dealmaker, is that right?
A. Yes.
Q. And he was charming?
A. Yes.
Q. He was a good salesman?
A. Yes.
Q. And when you met him he was looking for acquisitions?
A. Yes.
Q. And that's how you came to discuss with him the deal that you testified about with Stillwater?
A. Correct.
Q. Now, initially the plan was to buy Stillwater Management, right?
A. Correct.
Q. But that didn't work out?
A. Correct.
Q. And so you suggested that instead Gerova acquire the assets of Stillwater, right?
A. I don't recall that, no.
Q. You testified that there were other acquisitions that Gerova was looking into at that time.
A. Correct.
Q. One of those was the Wimbleton fund?
A. Yes.
Q. And that acquisition was discussed at the November 2009

meeting?
A. I don't recall exactly if that was the discussed. I'm sorry.
Q. You weren't involved in --
THE COURT: You can take the picture down.
Q. You weren't involved in setting up the Wimbledon deal, were you?
A. No.
Q. You testified that Gerova paid for the Stillwater assets with shares, right?
A. They were supposed to pay with shares, yes.
Q. The deal was that they would pay Stillwater with shares?
A. Correct.
Q. So Stillwater Capital Partners became a shareholder of Gerova, correct?
A. Correct.
Q. In fact, there were stock certificates made out to Stillwater Capital Partners of Gerova stock, correct?
A. I don't think that's true, no.
Q. Let me show you what has been marked for identification as Defendant's Exhibit 1214.
Do you see the exhibit?
A. Yes.
Q. Does that refresh your recollection?
A. No. I don't think I ever saw this.

Q. Stillwater owned preferred shares, correct?
A. I don't think so, no.
Q. Let me turn your attention to Government Exhibit 201, and this is a big document so I am going to --
MR. BIALE: If I may approach, your Honor --
THE COURT: You may.
MR. BIALE: -- and bring him the page.
Q. Do you recognize that document?
A. No.
MR. BIALE: This document is in evidence. Can we publish it to the jury?
THE COURT: You may. If it's in evidence, you may publish it.
Q. If I may just grab that from you for a minute. I have to compare my copy.
MR. TREMONTE: Your Honor, while my colleague is conferring with the government, may I approach the courtroom deputy about a technology issue?
THE COURT: You may.
BY MR. BIALE:
Q. So it's your testimony that you have never seen this exhibit, Government's Exhibit 201, in evidence before, is that right?
A. Correct.
Q. Turning your attention to --

MR. BIALE: This document is in evidence.

THE COURT: You can publish it to the jury.

We are working out the kinks and bugs in the system.

Go ahead.

BY MR. BIALE:

Q. Turning your attention to paragraph 5, isn't it true that Stillwater Capital Partners had 266,667 ordinary shares issued to it?

A. I don't know if that's true, but I can see what the paper says. But I never had information like that.

Q. Isn't it true that Stillwater Capital Partners had preferred shares as well?

A. As I testified already, I don't recall getting any shares.

Q. You testified also that any shares that were to be issued to Stillwater were not freely tradeable, is that right?

A. Correct.

Q. And that's because they were unregistered, is that right?

A. I'm not a securities lawyer so I don't know the detail of what that means, but it sounds correct.

Q. And you testified that in order to register the shares, Stillwater had to deliver a verified audit of its assets to Gerova, correct?

A. I believe so, yes.

Q. And you also testified that that audit was never done, right?

A. Well, the audit was done but it had one qualification.
Q. You testified that you never delivered the final verified audit to Gerova?
A. No. I testified I didn't deliver an unqualified audit.
Q. Now, there came a point in time when Gerova shared offices with Stillwater, isn't that right?
A. I wouldn't call it shared offices. They rented space from us and never paid for it.
Q. They had offices within your offices, is that right?
A. Correct.
Q. And a number of people from Gerova had offices there, right?
A. Yes.
Q. Joe Bianco was one of them?
A. Yes.
Q. He became the CEO after Marshall Manley?
A. I believe so, yes.
Q. His assistant, Rachel Lanham, had an office in there?
A. Yes.
Q. Gary Hirst didn't have an office there, did he?
A. No.
Q. In fact, Gary never visited that office except for that one meeting in November, isn't that right?
A. I don't think that's true.
Q. Now, you testified that you became a member of the board of

Gerova after the acquisition of Stillwater, right?
A. Correct.
Q. Jason Galanis continued to serve in a dealmaker capacity after you became a member of the board?
A. Yes.
Q. And you also testified that when you became a member of the board, his involvement seemed greater to you than you had previously understood it to be?
A. Correct.
Q. And you said that that raised concerns for you because of his SEC bar, isn't that right?
A. No. I said it concerned me before the deal was struck.
Q. But after the deal was struck, when you were a member of the board, it did not concern you?
A. The reason -- no, because we had a securities lawyer in every board meeting.
Q. And that lawyer was Stephen Weiss?
A. Correct.
Q. And he was an experienced SEC lawyer, correct?
A. Correct.
Q. And he was a partner at the law firm of Hodgson Russ?
A. Yes.
Q. And so it gave you some comfort that there was a securities lawyer with you at the board meetings?
A. Yes.

Q. He wouldn't allow the company to do things that violated SEC regulations and the law?
A. Correct.
Q. And he was also aware of the role that Jason Galanis was playing?
A. Yes.
Q. Now, while you were on the board Jason Galanis set up additional acquisitions for the company, isn't that right?
A. Yes.
Q. Another deal that he was working on was something called Master Trust. Are you familiar with that?
A. I'm not familiar with any deal he made with Master Trust, but I heard the words before.
Q. You are familiar that there was a entity called Master Trust?
A. Only through Jason talking about it.
Q. I am asking you about what your understanding was.
A. I didn't really understand exactly what it was about. It was something like, I was under the impression that he controlled it or something like that.
Q. It was your understanding that the deal with Master Trust was for liquidity, right?
A. Correct.
Q. And as you testified before, what liquidity just means is cash?

A. Right.
Q. Ultimately Gerova did not end up acquiring Master Trust, is that right?
A. It's probably correct.
Q. In fact, as far as you know, that was something that Jason Galanis was pursuing on his own?
A. As far as I know, yes.
Q. Now you ran a fund, the Stillwater fund, correct?
A. Yes.
Q. You ran it successfully?
A. Successfully up until the crisis, yes.
Q. You generated over a billion dollars in investments you testified?
A. Yes. We had about a billion dollars in assets.
Q. As a manager of the fund you had a certain fiduciary duty, isn't that right?
A. Correct.
Q. You're familiar with what those fiduciary duties are?
A. I don't have a list of them on me right now, but generally, yes.
Q. As a general matter, a fiduciary duty to your investors is to do what is in their best interest, isn't that right?
A. Correct.
Q. When you became a member of the board of Gerova, you also took on fiduciary duties in that role, isn't that right?

A. Correct.
Q. Those were fiduciary duties to Gerova's shareholders?
A. Correct.
Q. And Stillwater itself was a putative shareholder of Gerova, right?
A. Yes.
THE COURT: Let me see you at sidebar.
(Continued on next page)

(At the sidebar)

THE COURT: The last Q and A appeared to me to elicit testimony about a principle of law, which I don't claim to know Cayman Islands law, but I know if we were talking about U.S. law would be flat out wrong.

So a director of a corporation under the laws of most jurisdictions in the United States hold no fiduciary duties to shareholders. I propose to strike it. If you want to instruct me on Cayman Islands law and how this is different -- there is no indication that this man knows anything about Cayman Islands law.

MR. BIALE: I am just trying to elicit his understanding of what his duties were as a board member. So I apologize if the questions were inartful.

THE COURT: It is not a question of whether inartful. They were very artful. I am simply saying they elicited a point of law which is not the law in any jurisdiction I am aware of, and if this is an exotic principle of Cayman Islands law that you're relying on, it's one that I don't think this man is competent to testify about.

MR. BIALE: Fair enough.

MS. HARRIS: Can we have a moment?

THE COURT: The fiduciary duties in most common law jurisdictions are owed to the corporation.

MR. BIALE: I propose that I elicit that, that he understood that he had a fiduciary duty to the company.

THE COURT: First I am going to strike the Q and the A.

MR. BIALE: Thank you.

(Continued on next page)

(In open court)

THE COURT: Ladies and gentlemen of the jury, the last question and answer is stricken and you are instructed to disregard it.

You may inquire.

BY MR. BIALE:

Q. Mr. Doueck, you understood as a board member of Gerova you had a fiduciary duty to the company, correct?

A. Correct.

Q. Generally speaking, you should do what is in the best interest of the company, correct?

A. Yes.

Q. Now, you testified that there were numerous board meetings you attended.

A. Yes.

Q. Some you attended in person and some you participated by phone?

A. No, I am pretty sure I attended in person.

Q. You attended all of them.

A. Yes.

Q. That's because it was important to attend?

A. Yes.

Q. Because you were member of the board and you had this obligation to the company?

A. Yes.

Q. And you testified that there were board meetings almost every month, is that right?
A. About every month.
Q. So in 2010, for example, there were about a dozen meetings?
A. Probably 11 because they de-SPAC'd on January 22nd. They became a company, a public company on January 22nd.
THE COURT: Did you say de-SPEC'd?
THE WITNESS: De-SPAC'd.
THE COURT: Thank you very much.
What do you mean by "de-SPAC'd?"
THE WITNESS: Special purpose acquisition companies, SPAC, becomes de-SPAC when they make their acquisition and they become public.
BY MR. BIALE:
Q. So you attended about 11 meetings in 2010?
A. Correct.
Q. You also attended meetings in 2011?
A. Not every meeting, no.
Q. But some?
A. I don't remember going to that many in 2011.
Q. Numerous resolutions were discussed at these meetings, right?
A. I assume so.
Q. You said you attended the meetings, right?
A. I attended the meetings.

Q. And resolutions were discussed, right?
A. Yes.
Q. And they were voted on?
A. Correct.
Q. And you voted on those resolutions, isn't that right?
A. Yes.
Q. And you took those voting responsibilities seriously, didn't you?
A. Yes.
Q. You didn't vote for things that you didn't agree with?
A. Well, I tried not to.
Q. You didn't vote for things that were bad for the company?
A. No. I tried to vote for the success of the company so that my shareholders, my investors, would gain.
Q. That was part of your duty to the company?
A. Yes.
Q. At some of those meetings resolutions passed unanimously?
A. Is that a question?
Q. Isn't that correct?
A. I believe so.
Q. In those instances you didn't register a dissent to those resolutions, right?
A. Well, I actually kind of remember the example I gave before where I did register dissent to the appointment of Stuart Solomons, and yet when I saw the minutes of that meeting, it

said it was unanimous, which was surprising to me.
Q. You said when you received minutes you didn't always review them, right?
A. Correct.
Q. So you did not review that one when you received it?
A. I didn't.
Q. You also said that you received the October 6, 2010 board meeting minutes, correct?
A. I know that I received it because it was in my e-mail, but I didn't read it.
Q. Let's pull up Government Exhibit 222, which is in evidence.
MR. BIALE: Madam Deputy, can you turn on the screen, please.
Q. This is the exhibit that the government showed you before, correct?
A. Yes.
Q. If I can have you take a look at page 2.
The section in the middle is what the government blew up for you before, Ratification of Share Issuances.
That indicates that shares were issued in connection with the settlement agreements to these entities. And it was resolved that the warrants were ratified?
A. That's what the minutes say, yes.
Q. Let's go back to page 1.
MR. BIALE: My apologies. If I may just have a

moment.
Q. Take a look at the first paragraph.
A. First paragraph of page 1?
Q. Yes.
Does that indicate you attended the meeting?
A. Yes.
Q. And going back to page 2, the ratification, does that indicate that there were any dissents registered to that vote?
A. No.
Q. Now, there was some discussion about a report on short sellers -- sorry -- a report by short sellers that was negative about the company?
A. Yes.
Q. That was the Dalrymple report?
A. Yes.
Q. You testified that you wrote a response to that report?
A. Yes.
Q. You were concerned about these short sellers, right?
A. Yes.
Q. And short sellers are just traders that are betting that the value of the stock would go down, is that right?
A. Yes.
Q. And you wanted to combat that false information they were putting out?
A. Correct.

Q. You said that you wrote a document and you testified that it was not publicly issued, right?
A. Correct.
Q. You shared it with the board of directors of Gerova, didn't you?
A. I'm not sure exactly who I shared it with, but I definitely shared it with Jason Galanis and his group.
Q. And you shared it with Gary Hirst, right?
A. I believe so, yes.
Q. Now, in addition to the board the company had a CEO, right?
A. You mean at the time that the Dalrymple report came out?
Q. I'm sorry. In general.
A. In general, yeah.
Q. When you joined, that person was Marshall Manley, right?
A. Yes.
Q. And the CEO, his duty was to run the day-to-day operations of the company, right?
A. Correct.
Q. And Manley was also, when he was appointed CEO, Manley was also appointed chairman of the board, right?
A. I don't remember that. Sorry.
Q. When Manley was working as CEO, you had an opportunity to deal with him extensively, right?
A. Well, not extensively because he lived in Florida.
Q. But you did work with him?

A. Yes.
Q. And he came into the company with a long resume of accomplishments, right?
A. I can't testify about his resume. I don't remember what it looked like.
Q. He represented that he had a long record of professional accomplishments, right?
A. I believe so.
Q. You found him very difficult to deal with, isn't that right?
A. Correct.
Q. He acted like a bull in a china shop at the company, right?
A. Yeah, I probably would have characterized him like that.
Q. You felt that he wasn't really vested in the company's success, isn't that right?
A. Well, it was a long time ago. I don't remember exactly how I felt, but I know I was disappointed.
Q. And you had some concerns about him, right?
A. Yes.
Q. And because of those concerns you hired an investigative firm to look into his background, isn't that right?
A. I don't remember that. Sorry.
Q. Let me show you what has been marked for identification as Defense Exhibit 1218.

THE COURT: First of all, are you offering it?

MR. BIALE: This is to refresh his recollection.

THE COURT: This does not get displayed to the jury.

Let me explain to you, sir, what the concept of refreshing recollection means.

You might ask me the date the New York Mets won the World Series. OK. Someone might ask you about it and you might say, you mean the actual date? I don't recall.

And I could show you a copy of Sports Illustrated magazine with the Mets on the cover and, let's say for the sake of argument, it says, October 14, 1986.

Well, there are two possibilities. You might say, Sports Illustrated wouldn't have the wrong date on the date they won the World Series. In fact, it might say October 14, the date that will long live in Mets history. And you say this looks like Sports Illustrated and they are a well-known publication, so I guess it's right.

That's not refreshing your recollection. Then again you may look at it and you may say, that's right, that was my nephew's birthday. I remember we were having birthday cake when the Mets won, and it may bring it back to mind.

So the question that you're being asked is to look at this document and see whether, after looking at the document, you have a new and refreshed recollection. If you do, you may testify to what that new or refreshed recollection is. If you don't, then your answer should be no.

THE WITNESS: Thank you.
BY MR. BIALE:
Q. Have you had a chance to look at that document?
A. Well, this document is -- it's got to be 40 pages long. Do you want me to read the whole thing?
Q. You see what it is.
A. I just see the front. It's an e-mail from me to Jason.
THE COURT: We are not asking you that. We are asking you to look at it, and we are asking you whether or not looking at it -- take as much time as you like -- whether it brings to mind a new and refreshed recollection.
THE WITNESS: OK.
THE COURT: Does it?
THE WITNESS: No.
THE COURT: Thank you.
BY MR. BIALE:
Q. Isn't it true that you looked up articles about Manley's background?
A. Well, this e-mail is a background check, standard.
MS. MERMELSTEIN: Your Honor.
THE COURT: I am going to do this one more time. You're not to testify as to the content of the e-mail. It was shown to you for a limited purpose, to see whether it refreshes your recollection. That's all.
THE WITNESS: OK.

THE COURT: If there is a basis under the Rules of Evidence, or somebody wants to offer it into evidence and it's received into evidence, then you may talk about its content.

THE WITNESS: Can you repeat the question?

BY MR. BIALE:

Q. The question is, isn't it true that you found articles about Marshall Manley's background?

A. I don't remember doing that, no.

Q. I am going to show you another document to see if it refreshes your recollection.

I am showing you what has been marked for identification as Defense Exhibits 1215 and 1216.

A. OK.

Q. Does that refresh your recollection?

A. Could you ask me the question again. Recollection of what?

Q. The question is, isn't it true that you located articles about Marshall Manley's background?

A. No.

Q. Isn't it true that based on your concerns you came to form an opinion about Manley's background?

A. I actually don't remember about the background stuff. I just remember about what you asked me about before, which was, was he effective.

Q. Isn't it true that you came to form an opinion that he had been dishonest with the company about his prior

accomplishments?
A. I don't remember that. Sorry.
Q. You shared your concerns about Manley with Gary Hirst, isn't that right?
A. I remember sharing it with Jason Galanis. I don't remember exactly what I told Gary.
Q. Well, take a look at the documents that I gave you and see if those refresh your recollection.
A. No, it doesn't refresh my recollection. Sorry.
Q. In April 2010 you testified the board voted to terminate Manley, isn't that right?
A. Yes.
Q. You supported that vote?
A. Yes.
Q. Now, you dealt a lot with Jason Galanis in 2010, right?
A. Yes.
Q. At that time you thought he was a hard-working businessman, right?
A. Yes.
Q. You thought he was professional?
A. Yes.
Q. At that time you had no reason to believe he was involved in any kind of scam, right?
A. Right.
Q. But in 2011, you came to believe that he was dishonest, is

that right?
A. I'm not sure when I came to believe or think that he did something dishonest with this. I think it was years later, actually.
Q. There came a time when you came to believe that Jason Galanis was dishonest, isn't that right?
A. Yes.
Q. And he wasn't the person you believed him to be?
A. Correct.
Q. Now after Gerova, you stayed in touch with Gary Hirst, right?
A. I don't believe so, no.
Q. You talked to him -- did you ever talk to him about business again?
A. I think there was one investment that he needed information on that we gave him information on. That was it.
Q. Isn't it true that you spoke with him, you corresponded about social matters, personal matters?
A. No.
Q. Isn't it true that you sent him a note on his birthday?
A. I don't remember that, but I do send a lot of notes. So who knows.
Q. Let me show you something that may refresh your recollection.
I am showing you what has been marked as Defense

Exhibit 1212 marked for identification.

THE COURT: And the question is what?

Q. The question is, isn't it true that you sent Mr. Hirst a note on his birthday?

THE COURT: No.

MR. BIALE: I apologize.

Q. The question is whether this refreshes your recollection.

A. I don't remember sending this e-mail six years ago, no.

Q. Isn't it true that you asked after Mr. Hirst's daughter's health?

THE COURT: First of all, without looking at the document, do you recall inquiring as to Mr. Hirst's daughter's health?

MS. MERMELSTEIN: Objection, your Honor, as to relevance.

THE COURT: I am going to allow it.

THE WITNESS: No.

THE COURT: Look at the document. Does it refresh your recollection on that subject?

THE WITNESS: Faintly.

Q. Let me show you another document to refresh your recollection. I am showing you what has been marked for identification as Defense Exhibit 1213.

THE COURT: And the question is, does it refresh your recollection?

Is that the question?

MR. BIALE: Yes.

THE WITNESS: I'm sorry. It doesn't refresh my memory of this.

BY MR. BIALE:

Q. Isn't it true that in May 2010 you complimented Gary Hirst's professionalism and sense of fair play?

A. I don't remember doing that.

Q. Let me show you something that might refresh your recollection.

Can I show you what has been marked for identification as Defense Exhibit 1600.

Do you see that document?

A. Yes, I do.

Q. Does that refresh your recollection?

A. No.

MR. BIALE: No further questions.

THE WITNESS: I'm sorry.

THE COURT: All right. You may redirect.

MS. MERMELSTEIN: Thank you, your Honor.

MR. BIALE: One moment please. I'm sorry.

Thank you.

THE COURT: All right. You may inquire.

MS. MERMELSTEIN: Thank you, your Honor.

REDIRECT EXAMINATION

BY MS. MERMELSTEIN:

Q. Very briefly, Mr. Doueck.

Just to clarify the whole receipt of shares situation. The agreement with Gerova contemplated and promised that Stillwater investors would receive Gerova shares, is that right?

A. Exactly.

Q. And you anticipated that they would come, right?

A. Yes.

Q. Did you actually ever receive the actual shares?

A. No.

Q. The whole audit issue, did you receive an audit for the valuation of the loan fund?

A. Yes.

Q. What about it was qualified?

A. So as I testified before, in the fall of 2009 we had an independent company come down and spend a lot of time and a lot of money valuing the asset, which is hard to value, and they gave us a range of values. For the Gerova agreement that we made in January of 2010, we put the midpoint of that. Let's say it was 100 and 150, we picked a hundred and a quarter.

When we got the audit back from our auditors, accountants in 2010, they said you weren't allowed to do that. You had to pick the low point of the valuation, not the midpoint. So you have to pick the low point. And then because you made a deal with Gerova in January 2010 and you picked the midpoint, that's a $20 million difference, you have to show a markup for that because the value of a property is what it sold for.

So since you did not do it that way in January of 2010, you just picked the midpoint -- from a business point of view that made sense to us -- since you did it that way, that's not GAAP, that's not generally accepted accounting principles. So that was the qualification on the audit.

Q. Other than that it was a complete audit?

A. Correct.

Q. With regard to Steve Weiss, do you know if Steve Weiss was aware of everything Jason Galanis did?

MR. BIALE: Objection.

THE COURT: Overruled.

A. I don't know, no.

Q. Then is it fair to say that six years after these events you don't remember every e-mail or conversation you had?

A. No.

Q. If you had been in a board meeting and you had been asked to approve an issuance of 5 million shares, would you remember that?

MR. BIALE: Objection.

THE COURT: Overruled.

A. I would definitely remember that.

MS. MERMELSTEIN: No further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT: You can just leave the exhibits there.

You may call your next witness.

MR. BLAIS: The government calls Professor Arthur Laby.

MR. TREMONTE: Your Honor, may we approach before the witness takes the stand?

THE COURT: Sure.

(Continued on next page)

(At the sidebar)

MR. TREMONTE: I wanted to front the issue so it doesn't come up as a surprise. We have had some back and forth and correspondence about the qualification of this witness. I just want to make it clear, based on our colloquy and the correspondences, Professor Laby will testify as a summary witness, as a fact witness only. I just want to make sure that's addressed beforehand so I am not jumping up and down when they try to credential him.

THE COURT: I think there are two distinct issues.

Are you offering him as an expert?

MR. BLAIS: No. To be clear, we are not offering him as an expert. We are not eliciting any expert opinions from him.

That being said, I think we do intend to go through his background in some detail, in part because we are going to be asking him about summary principles of the investment field, including information about investment advisers, stock, warrants. We are offering this witness as background witness who can educate the jury about some of the complicated concepts that are at issue in this trial. I think most of the testimony should be relatively uncontroversial. They are just basic principles of the securities filed.

We don't intend to ask him to offer any opinions about any conduct at issue with the specific case. We are simply trying to bring the jury to a place where we can talk about complicated concepts so they have background knowledge about them.

MR. TREMONTE: Then I am not sure why the witness needs to go through his credentials.

THE COURT: Basically, a party calling a witness is entitled to have the witness describe who they are and what they do.

MR. TREMONTE: I think the problem that I have, Judge, is if in the ordinary course a summary witness is someone like a paralegal, who brings no particular expertise to the testimony that they are going to offer because it involves nothing more than reciting facts about, for example, phone records or documents that they have reviewed and about which they are not going to give an opinion.

It does seem that here this witness is going to be talking about, for example, the standards and practices applicable to investment advisers. That is not something that is just fact testimony. It seems to me it goes over the line into giving opinions about what people are required to do under a certain set of circumstances. My understanding is that is typically something that you have to qualify an expert to do because the jury needs to be educated as to the basis for the opinion that is being offered.

So here there does seem to be a disconnect. If they are not being offered as a fact witness and they are not being offered as an expert witness, and there has not been disclosure here, I want to be in a position to carefully police the line between fact and opinion.

MR. BLAIS: I would say several things. One, I don't think asking about what the duties of an investment adviser are is opinion testimony. We are not asking him to opine on anything. We are asking him to provide background facts about a relevant regulatory scheme that is somewhat complicated and that can be of assistance to the jury.

I think eliciting information about his background, including the fact that, for example, he worked at the SEC's Division of Investment Management, will provide background as to why he can testify as to facts regarding that regulatory scheme.

MR. TREMONTE: As long as the testimony doesn't cross the line from fact to opinion.

THE COURT: I am counting on you to let me know.

(Continued on next page)

(In open court)

ARTHUR LABY,

called as a witness by the government,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell it for the record.

THE WITNESS: My name is Arthur Laby. A-R-T-H-U-R, L-A-B-Y.

DIRECT EXAMINATION

BY MR. BLAIS:

Q. Good afternoon, Professor Laby.

How are you employed?

A. I am a law processor at Rutgers Law School in New Jersey.

Q. Beyond serving as a law professor, do you have any other employment?

A. I do. From time to time I act as a consultant or an expert witness, such as in matters like this.

Q. What sorts of things do you consult about?

A. Typically the duties and obligations of financial services professionals, such as investment advisers and broker-dealers.

Q. Stepping back, can you give the jury a brief summary of your educational background.

A. Sure. I attended the University of Pittsburgh. After that, I went to law school. I attended Boston University School of Law. I graduated from Pitts in 1985 and from law

school in 1989.
Q. What did you study as an undergraduate at the University of Pittsburgh?
A. At the University of Pittsburgh, I was a double major in political science and communications.
Q. You testified that you graduated from law school in 1989. What was it that you did after law school?
A. Immediately after law school I clerked for a federal district court judge in Baltimore, Maryland.
Q. After clerking, what did you do next?
A. After clerking, I went to work as an associate in a law firm in Washington, D.C.
Q. What was the nature of your practice when you were working at a law firm?
A. The nature of the practice at first was general litigation and then eventually I moved specifically into the banking and securities area at the firm.
Q. How long did you work at the law firm?
A. Approximately four years.
Q. What did you do after you left the law firm?
A. After I left the law firm, I went overseas on a Fulbright grant, teaching and researching at two different law schools in Germany.
Q. After completing your Fulbright, what did you do next for employment?

A. When I came back to the U.S. I joined the Securities and Exchange Commission staff, the SEC staff.
Q. Just to be clear, the Securities and Exchange Commission is sometimes also known as you referenced, as the SEC?
A. Exactly. The SEC.
Q. Generally, what is the SEC?
A. The SEC is the federal government agency that has primary responsibility for implementing and enforcing the U.S. federal securities laws.
Q. How long did you work at the SEC?
A. Almost ten years.
Q. What divisions or departments did you work in when you were at the SEC?
A. I worked in three different areas. When I first joined the SEC staff, I worked in an office called the Office of International Affairs. That makes sense because I was returning from my time overseas.
Then I joined a division called Division of Investment Management. And then eventually I moved to an office called the Office of the General Counsel.
Q. What does the SEC's Division of Investment Management do?
A. Division of Investment Management regulates the investment management industry, such as mutual funds and investment advisers.
Q. What were some of your duties and responsibilities in the

SEC's Division of Investment Management?
A. Well, they varied. But my particular area of responsibility was working in a rule making, a rule writing group. So when the SEC goes to propose and adopt rules governing the investment advisory profession, we were required to prepare those draft rules to eventually send them to the Commission for approval.
Q. You also testified that you worked in the SEC's general counsel's office.
What were your duties and responsibilities in the SEC's general counsel's office?
A. So I had two primary responsibilities. I eventually became an assistant general counsel and I had responsibility for both the investment management matters and for some international matters because of my previous time in International Affairs.
What we were required to do in the Office of the General Counsel was to review every matter, such as a rule or an enforcement action that the staff was sending to the Commission for its approval. And we had to advise our boss, the general counsel, and eventually the Commission itself, on whether it should move forward with that initiative.
Q. What did you do after working at the SEC?
A. After working at the SEC, I moved to the world of academia and became a law professor.
Q. Where do you teach?

A. I teach at Rutgers Law School.
Q. What kinds of classes do you teach?
A. I teach business law classes. So each year I teach a corporation's course. I also typically teach a securities regulation course and then another course that varies, such as investment management regulation or fiduciary law. Those are two other courses I have taught.
Q. Other than your responsibilities teaching class, do you have other duties and responsibilities as a law professor?
A. Yes. There are two other sets of responsibilities. So of course one important responsibility is researching and writing. Much of the work of an academic is to prepare articles, law review articles for publication in our field. Then there is also an obligation for what we call service. So serving on law school committees and serving generally the law school community.
Q. Now, Professor Laby, have you published any books or articles?
A. Yes, I have. I have published several.
Q. What, generally, were those about?
A. Generally they were about the duties and obligations of financial services professionals.
So I am the author of a multi-volume treatise, a large book, on investment advisers and mutual funds, and then I have published many other book chapters and articles related to the

obligations of investment professionals.

(Continued on next page)

BY MR. BLAIS:

Q. Now, in addition to your academic research and writing, what steps, if any, do you take to keep informed of changes in the laws related to securities regulation?

A. Yeah. I have to stay current on laws and regulations and developments. So I'm a member of many different organizations, some in the Philadelphia area, some out of town, which I attend on a regular basis to stay current with respect to what is happening in the industry and, of course, changes in laws and regulations.

Q. Now, Professor Laby, are you being paid by the government for your testimony here today?

A. I am.

Q. How much?

A. My hourly rate is $750 per hour.

Q. Is that your standard fee?

A. That's my standard fee for the government.

Q. Approximately how much have you earned in total for your work on this case?

A. Well, in preparing for my testimony today, I've probably spent six to eight hours preparing, so I think that's 5 or $6,000. I'm not sure exactly what the amount would be.

Q. Does your compensation depend in any way on the outcome of this case?

A. No.

Q. Professor Laby, what, if anything, do you know about the underlying conduct of this case?

A. I don't know anything. I have not been given that information.

Q. I want to discuss with you some general investment concepts. Can you explain for the jury, what is a stock?

A. Sure.

THE COURT: Well, let me see. We're going to take a mid-afternoon break at this point, and then we'll pick up. So 10-minute break, and then we'll resume. Okay?

Professor, if I could ask you to step down and step out of the courtroom for a minute.

(Continued on next page)

(Jury not present)

THE COURT: I could use help on this. Advisory Committee notes to Rule 702, the 1972 version of the proposed rules, states as follows:

"Most of the literature assumes that experts testify only in the form of opinions. The assumption is logically unfounded. The rule accordingly recognizes that an expert on the stand may give a dissertation or exposition of scientific or other principles relevant to the case leaving the trier of fact to apply them to the facts." And it says, "The rule is broadly phrased. The fields of knowledge which may be drawn upon are not limited merely to the scientific and technical but extend to all specialized knowledge. Similarly, the expert is viewed not in a narrow sense, but as a person qualified by knowledge, skill, experience, training, or education. Thus, within the scope of the rule are not only experts in the strictest sense of the word, eg. physicians, physicists, or architects, but also the large group sometimes called skilled witnesses, such as bankers or landowners testifying to land values."

Is a witness such as this who, based on knowledge, skill, experience, training, and education testifying as an expert witness when the witness lays out certain principles that are relevant to the case? Mr. Blais.

MR. BLAIS: Your Honor, I think it's unclear if the witness isn't going to be offering any opinions whether it's necessary to qualify that witness as an expert. Out of an abundance of caution, we provided notice regarding this witness to defense counsel.

THE COURT: Okay. I didn't realize that. That's where I'm headed with this. Let me let you continue, Mr. Blais. Go ahead.

MR. BLAIS: We provided notice as to our intention to call this witness. We provided his CV and other background information. I think, as I read Rule 16, it requires us to provide a summary of any opinion testimony that we seek to elicit, and as well as the bases and reasons for those opinions. But I think as I represented, we don't intend to elicit opinions from Professor Laby, we intend to elicit facts. And to the extent that we intend to elicit facts, I think we provided sufficient notice under the rules.

If your Honor believes that it's necessary to qualify this witness as an expert, we're more than happy to proffer him as an expert. I can say the practice differs in different courtrooms in this building as to witnesses in this situation as to whether it's necessary to qualify.

THE COURT: For example, in an organized crime trial, a witness takes the stand as to the structure of organized crime. Is that an expert witness?

MR. BLAIS: I think in certain courtrooms it is and certain courtrooms it's not. I think because there's that uncertainty, we did provide the disclosure in advance. We've not heard any objection to date regarding our intention to call this particular witness.

THE COURT: Well, did you provide any sort of summary of what he was going to testify to?

MR. BLAIS: We provided general categories of what he was going to testify about. I think it was three categories; one was the duties of investment advisers, one was the filing obligations of foreign companies, ie. that they're required to file annual reports on Form 20F, and the third category was --

MR. TREMONTE: Reg S.

MR. BLAIS: -- yes, the terms of Regulation S, which we have heard it alluded to in the openings there was an exemption to the registration requirements that applies, and we intend to elicit from Dr. Laby what is a Reg S and how does it differ from the typical registration process.

THE COURT: All right. Let me hear from Mr. Tremonte.

MR. TREMONTE: Your Honor, we addressed this in our letter. It's document 255 on the docket dated September 10th. The point we made there, which I'll reiterate, is the government did, in fact, provide us with a letter characterized as an expert notice letter. We responded in kind and provided a similar letter providing notice to the government. The government in response said, "Your notice is not sufficient," number one, and number two, "Just so you know, to be perfectly clear, we're not noticing these people as experts, they will be summary fact witnesses." And we attached that correspondence to our September 10th letter. I think separate and apart from the point that Mr. Blais makes, which may or may not be right, which is a difference of practice in different courtrooms, there is a fairness issue here. We exchanged notices and then had a subsequent conversation and exchange of letters where the government made clear that they were not in fact presenting these witnesses as expert witnesses, they were going to put them on as fact witnesses, so we proceeded on that assumption.

If they said we're going to put on a witness to talk about the law and standards relating to investment advisers, what they must do under the law, we would have responded in kind and said, okay, well, tell us what's the basis of the opinion, give us an outline of what's going to be said so we may respond to it, but we are not in a position to do that here, and that's because of the manner in which the government proceeded at their election.

So again, I think there are two issues. There's the interpretation of the rule, which may vary from courtroom to courtroom, but there's also what happened here according to which, in fairness, I don't think the government should be permitted to put on an expert witness.

THE COURT: So the record is complete here, I have in front of me a letter dated August 1st from the government to, among others, Mr. Tremonte which reads, in part, as follows:

"The government hereby provides notice that it anticipates calling the following individuals as expert witnesses at the upcoming trial in this matter: Professor Arthur Laby of Rutgers University Law School will testify regarding, one, the practices and standards applicable to investment advisors, including operating with undisclosed conflicts of interest and carrying out absent full disclosure, intertrading among clients' accounts to generate capital to meet payment obligations; two, the SEC's filing requirement for foreign private issuers; and three, Regulation S which provides an exclusion from the Section 5 registration requirements of the '33 Act for offerings made outside the U.S. by foreign investors." And then it goes on to say that, "The curriculum vitae for Mr. Laby and others are attached."

It seems to me that the defendant was on notice. While there may be a dispute as to whether or not a notice was ever required because Mr. Laby, in the government's view, may be properly considered a fact witness, though someone else may view it differently, while the government may have said, no, this is fact testimony that we're eliciting, not expert testimony, the government never disclaimed, from what I'm being told, an intent to call Mr. Laby.

MR. TREMONTE: That is correct. Just to be clear, never withdrew the notice to call Mr. Laby, but made very clear that he would not be called as an expert witness.

THE COURT: Well, on what possible area? I mean, it can't be both ways.

MR. TREMONTE: We asked the same question.

THE COURT: Yes.

MR. TREMONTE: We asked the exact same question. And I think the point is that it feels to us like they are trying to have it both ways. They're trying to put on a witness who presents as an expert. In fact, the first sentence out of his mouth -- or the third sentence out of his mouth -- was, "I often testify as an expert witness."

THE COURT: I heard that. That doesn't mean he's doing it today, but that's beside the point.

MR. TREMONTE: But to be able to put on a witness like that who presents --

THE COURT: When the government sent you the letter saying, well, we're going to call Professor Laby as a fact witness, what did you say, if anything? Goody, or --

MR. TREMONTE: No. I think we said essentially the same thing we're saying today. I'm not sure what that means, doesn't seem like your disclosures are adequate, and that's why we wrote the Court summarizing our communications and attaching our written communications on September 10th.

THE COURT: No. And you absolutely did, and I acknowledge that.

MR. BLAIS: Your Honor, just to complete the record, I think we sort of said the same thing back to defense counsel. Defense counsel noticed for experts to us. We said, well, are these individuals who are going to be offering opinions, because if so, under the rules, you need to offer -- you need to give us their bases and reasons for their opinions. If not, if they're just summary fact witnesses, then you don't need to make any further disclosure at all because you've summarized what they're going to testify to.

For certain of their witnesses, the Cayman Island law expert and the witness who is going to be testifying about option pricing, they did provide that further notice. For the other two, they said, no, they're summary witnesses, we're not going to provide --

THE COURT: There's a missing -- wait a minute, Mr. Tremonte, because there's going to be something you might want to respond to. I think there's a missing piece of the puzzle, and it leads me to allow this witness to testify.

Mr. Tremonte, quite correctly, did write to the Court and wrote about his intention to call his own expert witness at trial. In the last paragraph, Mr. Tremonte wrote -- and I think appropriately -- the following:

"There is no inadequacy in the government's disclosures so long as the testimony of Mr. Hinton and

Professor Laby remains of a summary or factual nature. However, given the government's representations and disclosures, we will object to the extent either offers opinion about the facts presented in this case or hypotheticals that are analogous to the facts in this case."

I will not allow the government to do that. Other than that, Professor Laby may testify. Certainly, I would say that the testimony I've heard would qualify him as an expert witness, and certainly, if you want to voir dire on his qualifications, you may have it, Mr. Tremonte. But as long as his testimony remains of a summary or factual nature consistent with the disclosures, I will allow the testimony

MR. TREMONTE: Understood, your Honor. Thank you.

THE COURT: Thank you.

(Recess)

(Continued on next page)

(Jury present)

THE COURT: Go ahead, Mr. Blais.

BY MR. BLAIS:

Q. Professor Laby, before we took our mid-afternoon break, I was starting to ask you about some general investor concepts. What is a stock?

A. Well, a stock is essentially evidence of ownership of a company or a corporation. So if somebody owns, let's say, a share of stock in IBM or Apple Computer, they actually own just a very tiny sliver of that company.

Q. What does an investor get for buying stock?

A. Well, an investor would get profit if the company does well. So if a corporation, company does well, it might issue a dividend, that is, give out a share of its profits from time to time to the investor. Or if the company does well, the price of the stock will increase over time, and if the investor goes to sell it, then they will make money.

Q. Is a company required to pay a stockholder back at any time?

A. No. No. That's not the way stock works. You own a bit of the company, but the company is not required to pay you back.

Q. What are some reasons why an investor might want to invest in stock?

A. Well, the primary reason investors invest in stock is a way to have their money, their capital, appreciate over time. Of course, we can all put our money under the mattress, but if we do that, we're not going to earn any rate of return. So it's very common that people invest in stocks as a way to have their money grow over years.

Q. What is the potential downside to investing in stock?

A. The downside is that the company does not do well. If that's true, then the value of your stock, let's say you bought it at $10 per share, it might drop to $8 a share or $7 a share.

Q. Is it possible for an investor to lose their entire investment in stock?

A. Absolutely. Unfortunately, it's very common that companies, they go completely bankrupt, and in that case the investor would lose their entire investment.

Q. Now, Professor Laby, what is equity?

A. Well, equity is just really a fancy term to describe stock. People often refer to equity in a corporation as the ownership of that corporation. It just really refers to stock that I mentioned earlier.

Q. Now, is a stock a security?

A. Yes. A stock is considered one type of security. That's right.

Q. What generally is a security?

A. Well, a security refers to a wide variety of instruments that are ways to invest in corporations. It's a broader term than the term "stock". The word "security" is broader and

refers to other kinds of investments.
Q. What governmental entity, if any, regulates the issuance and trading of securities in the United States?
A. The issuance and trading of securities is regulated by the SEC, which we discussed earlier.
Q. What, if any, are the primary laws that govern the issuance and trading of securities in the United States?
A. Well, there are two primary laws that govern trading of securities; one is called the Securities Act of 1933, and the other is called the Securities Exchange Act of 1934. There are others, but those are the two primary laws.
Q. And Professor Laby, what is a securities exchange?
A. A securities exchange is simply a place, a location where people can go who want to buy and sell a given security. Now, it used to be that that was a physical place, like the old-fashioned floor of the New York Stock Exchange. Today, these exchanges are often electronic. But nevertheless, it's a place where buyers and sellers come together to trade securities.
Q. What are some examples of securities exchanges in the United States?
A. Well, the two most well-known securities exchanges are the New York Stock Exchange, the NYSE, and the other is called the NASDAQ, which is another securities exchange.
Q. Who regulates securities exchanges in the United States?

A. The securities exchanges are also regulated by the SEC.

Q. What does it mean for a security to be traded on a securities exchange?

A. Well, if a security is traded on an exchange, that means that that security that has essentially been accepted for trading on the exchange -- one has to petition and apply to have your stock, the company stock traded on an exchange. So if it's traded on the exchange, that means the exchange has accepted it and is willing to be a clearinghouse for those who want to buy and sell that particular security.

Q. How can an investor buy and sell securities that are traded on a securities exchange?

A. Well, the most common way that happens is to simply call a stockbroker, to call a broker/dealer. Those broker/dealers are also members of the exchange, and your broker, your stockbroker, can go out and buy securities for you, buy stock for you on that given exchange.

Q. Are there securities that do not trade on a securities exchange?

A. Yes. Yes. There are some securities that have not been accepted for trading on an exchange, but nevertheless, there are still markets where people buy and sell those securities.

Q. Just to be clear, how can those shares that aren't traded on a securities exchange be bought or sold?

A. Well, again, there's just another location. Again, that's

often an electronic location, which is really a market, we don't really refer to those as an exchange, but it's again a place where people can go -- a market where typically brokers can go, and they meet with one another, and they can buy and sell those securities, even though those securities, those stocks are not traded on something like the New York Stock Exchange.
Q. Now, Professor Laby, are you familiar with the concept of liquidity?
A. Yes.
Q. What is liquidity?
A. Liquidity simply refers to the ease by which a given stock can be traded. So companies we're all very familiar with like IBM and Apple Computer, they trade all the time. People are buying and selling shares all day long. Those securities, those stocks are very liquid.
If a stock is not liquid, that means there are not a lot of buyers and sellers in that stock, and they simply don't trade very often.
Q. Just to be clear, can a stock be an illiquid asset?
A. Yes. A stock can be an illiquid asset if there are not a lot of buyers and sellers for that particular stock.
Q. What does it mean for a stock to be thinly traded?
A. If a stock is thinly traded, that also refers to this idea where there are not a lot of buyers and sellers for that stock,

there simply is not a lot of interest in the marketplace, it does not trade very often, and so that's often referred to as thinly traded.
Q. Professor Laby, what is a warrant?
A. A warrant is a different kind of instrument. It refers to the right to purchase a share of stock at some point in the future at a given price regardless of what that stock is trading at. So if I have a warrant to purchase a share of stock at $10 per share, even if that stock is trading at a higher price, I can exercise my warrant and buy that stock at a given price at some point in the future.
Q. And in connection with a warrant, what is a strike price?
A. The strike price refers to the price that I just mentioned a minute ago. So the strike price is the price at which I can go out -- if I own the warrant, I can go out and exercise the warrant and buy that stock at a given point in the future.
Q. Now, under the United States securities laws, what is an issuer of securities?
A. An issuer is, again, just a fancier term to refer to the company that issues its shares into the marketplace. So IBM decides to sell some shares to the public, then that company is considered the issuer of the shares.
Q. And under the U.S. securities laws, what is a foreign private issuer of securities?
A. A foreign private issuer refers to a company that's located

outside of the United States whose shares are primarily held by persons who are not resident here in the U.S. There are some other technical parts of the definition, but that's the general idea.

Q. Can the shares of a foreign private issuer trade on a U.S. securities exchange?

A. Yes. Yes. Shares that are issued by foreign private issuers can trade here in the U.S.

Q. Now, under the U.S. securities laws, are companies whose shares trade on a securities exchange required to file periodic reports with the SEC?

A. Yes.

MR. TREMONTE: Objection. Objection. What kind of exchange? Domestic? Foreign?

THE COURT: Rephrase.

MR. BLAIS: I can clear that up.

Q. Under the U.S. securities laws, are companies whose shares trade on U.S. securities exchanges required to file reports on a periodic basis with the SEC?

A. Yes, they are. They have to file reports.

Q. Do the filing requirements differ for foreign private issuers and issuers who are based in the U.S.?

A. Yes, they do. There are different types of requirements.

Q. As a general matter, what kinds of reports are foreign private issuers required to file with the SEC?

A. Well, there are several. But two of the most well-known forms that are filed by foreign private issuers are first the Form 20F, and that refers to an annual report that a foreign private issuer has to file with the SEC. And the second well-known form that foreign private issuers is called the Form 6K, which is filed not necessarily every year or every quarter, but simply from time to time when something significant at that company happens.

Q. Let's focus first for a minute on the Form 20F that you referred to. That's the annual report that foreign private issuers are required to file?

A. That's right.

Q. As a general matter, what's required to be included in a 20F filing?

A. There's a lot of information that has to go into the 20F. It includes information like information about the company itself. What is the company? Where is it located? Who are its top officers and directors? What sort of products and services is the company offering or manufacturing? What is the financial information of the company? How is it doing in the marketplace, and how is it changing over time?

Q. You also mentioned the Form 6K. What is generally required to be filed on a Form 6K?

A. There are a couple of things. First, as I mentioned earlier, if something significant happens at the company, then that company has to go ahead and file a 6K shortly after that event takes place. But interestingly, for foreign private issuers, it's often important with respect to when one has to file a 6K, what has happened and what is required by that company's home country. So if the home country requires a filing in a given instance, then that triggers a filing for that foreign private issuer to file a 6K here in the U.S. with the SEC.

Q. How, if at all, do the filing requirements of a foreign private issuer differ from the filing requirements for a U.S. issuer?

A. Well, they differ because the SEC in some ways has given foreign private issuers a little bit of a break. So there are some requirements that are placed on U.S. companies that are simply not placed on those foreign private issuers.

Q. What are some examples of the differences?

A. So one example is the requirement to file a quarterly report, which is called a Form 10Q. That requirement is placed on companies here in the U.S. They have to file quarterly reports. There is no requirement to file a quarterly report for foreign private issuers.

In addition, there are certain materials that have to be filed in connection with the proxy solicitation process that has to do with votes that take place with the company's shareholders. Those filings have to be made by U.S. companies, the foreign private issuers do not have to file those proxy materials with the SEC.

Q. Professor Laby, are you familiar with the concept of materiality?

A. Yes.

Q. From the SEC's standpoint, what is materiality?

A. From the SEC's standpoint, materiality refers to the importance of information in the given filing. So if information is considered material, then that refers to the idea that that information would be necessary or important for an investor to make its decision with regard to whether to invest in that particular security.

Q. What general principles, if any, apply when companies file periodic reports with the SEC?

A. Well, the general principles that I would say apply are two-fold. First, the company, of course, cannot make any misstatements in its filings. They can't lie. They can't say anything false in those filings. In addition, they cannot make what's called material omissions. So they cannot leave information out of their filings if that information would be necessary to make the filing not misleading. So the first is no misstatements, no lies, and then no material omissions, don't leave anything out that is really important.

Q. I'm going to turn to a slightly different topic now.

What does it mean for the stock of a company to be restricted as opposed to unrestricted?

A. The idea of a stock being restricted means that there are certain restrictions that are placed on whether that stock can be bought and sold in the marketplace. If the security is restricted, that typically means that the holder of that security cannot sell it. The selling of it is restricted for a given period.

Q. What is a restricted legend?

A. The restricted legend simply refers to documentation on the stock itself, on the share itself that simply indicates this stock may not be resold for a given period of time.

Q. Now, are you familiar with the concept of free trading shares?

A. Yes.

Q. What does that mean?

A. Free trading shares simply means that those shares are not restricted, and they can simply be freely traded in the marketplace between individuals or firms.

Q. Under the United States securities laws, what is a company generally required to do if it wants to issue new unrestricted securities?

A. Well, if a company wants to issue new unrestricted securities, it generally has to file something called a registration statement with the SEC. And once that registration statement is essentially approved by the SEC, the

company can then go out and offer and sell its shares in the marketplace.
Q. What is a registration statement?
A. A registration statement is really just a long form. It's a long document that the company has to fill out that includes really voluminous information about the company itself and about the securities that it wants to sell. It then sends that information to the SEC, and part of that information is also made available to investors.
Q. Now, can a company issue unrestricted stock without filing a registration statement?
A. Yes. There are ways in which companies can be exempt from these onerous registration provisions from the securities laws, and the exemptions can allow the company to essentially get out of that registration process but still sell shares, as long as they meet the requirements of these exemptions.
Q. Now, can a shareholder who owns restricted stock sell that restricted stock?
A. Well, not if the restriction is still in place. So they would have to wait until the restriction period ends, and of course, at that time, if the restriction no longer applies, they could then sell those securities to another buyer.
Q. How long does restricted stock remain restricted?
A. It depends on the particular restriction that we're talking about, but it can run from 40 days to one year, depending on

the facts and circumstances.

Q. Now, under the United States securities law, are there certain exemptions that allow a company to issue unrestricted stock without filing a registration statement?

A. Yes, there are. There are some exemptions that allow companies to do that.

Q. Are you familiar with something called Regulation S, as in Sam?

A. Yes, I am.

Q. What is Regulation S?

A. Regulation S is one of those exemptions that has been prepared and passed by the SEC that allows certain types of sales of securities, typically securities sales that are located offshore, out of the U.S., to be exempt from the registration provisions of the securities laws.

Q. As a general matter, what are the requirements for issuing shares pursuant to Regulation S?

A. Well, there's two primary requirements that Regulation S imposes. First, the issuance of the securities has to take place offshore, it has to be outside of the United States. And second, it's important that there not be any directed selling efforts here in the United States.

So the idea is that people who are here, resident in the U.S., will not buy those shares. So the offer and sale has to take place offshore, outside of the U.S., and there can't be any -- cannot be any directed selling efforts here in the U.S.

Q. So to be clear, are shares issued under Regulation S restricted or unrestricted?

A. Well, it depends on the type of issuer. The rules get a bit complex. In some cases they are restricted, and other cases they are unrestricted.

Q. Can shares issued under Regulation S be sold to U.S. investors?

A. Well, they can eventually be sold to U.S. investors, but not at the outset that I talked about earlier. In order for Regulation S to apply, once Regulation S applies, there cannot be these directed selling efforts here in the U.S. Once the offering is complete, then yes, it's possible for U.S. investors to buy those shares.

Q. But for what time period does the resale restriction apply on Regulation S shares?

A. So again, it depends on the particular issuer, the company that we're talking about, but the range is generally from 40 days to one year.

Q. What are the consequences under the U.S. securities laws if shares are sold in violation of Regulation S?

A. Well, if shares are sold and that company has not followed the strictures of Regulation S, and that would be the case if shares are sold within the restricted period, that means that the exemption that we've been talking about, the exemption from the registration provisions simply does not apply. And if another exemption does not apply to that company, then there could be -- would be a violation of the registration provisions of the securities laws.

Q. Professor Laby, I want to now turn to a different topic entirely, and that's the topic of investment advisers.

What is an investment advisor?

A. An investment advisor is a person or a firm who is in the business of providing advice about securities like stocks, bonds, and mutual funds to other people for compensation. They have to be paid to be considered an investment advisor.

Q. What sorts of things does an investment advisor do for clients?

A. Well, typically, an investment advisor would meet with the client, understand what their goals are with respect to investing, and then recommend ways in which that investor could invest its funds, investing in, for example, stocks, or mutual funds, or other kinds of investments.

Q. Just to be clear, do investment advisors provide the money for their clients to invest?

A. No. No. They don't provide the money, they simply recommend and advise the client on how to invest the client's funds.

Q. So whose money is it that gets invested?

A. It's the clients, it's the customer's money that gets invested.

Q. How are investment advisors paid?

A. Investment advises can be paid in several ways. The most common way that they're paid is by charging a percent of the assets under management in a given account. So they might charge 1 percent or 1 and a quarter percent of the amount of the assets in a given account. But they can also be paid on an hourly basis, they can simply charge for their advice by the hour, and some even charge simply a flat fee. They might charge $100 or $500 for giving advice to that client.

Q. What kinds of clients do investment advisors have?

A. The types of clients range dramatically. So some clients are individuals like you and me, other clients are very, very large institutions, like pension funds and mutual funds that can have millions or literally billions of dollars. So there's quite a range in types of clients.

Q. How does the relationship between an investment advisor and a client typically start?

A. The relationship typically starts by the investment advisor possibly reaching out to a new client. They might do that through simply calling people up on the phone whose names and numbers they have. They might get referrals from their current clients with respect to new clients, and a relationship will often develop as a result of that initial contact.

Q. When an investment advisory relationship begins, is there

typically some kind of written memorialization of that relationship?
A. Yes, there is. This is typically an advisory contract. It's a contract that is signed by both the investor, the client, and the investment advisor that lays out what it is that the advisor is going to do for the client.
Q. What sorts of things are generally in an investment advisory agreement?
A. Well, in the investment advisor agreement, you would see, of course, the identity of the advisor, who it is, where it's located, what kinds of services the advisor is going to provide for the client, perhaps over what period of time it's going to provide those services, and then, of course, it'll have an explanation of how the advisor is going to be paid, how is it that the client is going to be billed for those services provided by that advisor.
Q. Does a client give money directly to the investment advisor?
A. Typically, no, that's not the way it works. The client will open an account in another institution, a bank or a broker/dealer, for example, and then the advisor will advise the client on how those funds should be invested.
Q. Are you familiar with the term "custody"?
A. Yes.
Q. What does custody mean in the context of an investment

advisory relationship?

A. Custody refers to the idea of where those funds and securities are held, those securities and cash that are held, which institution holds those securities on behalf of the investor. So as I mentioned, that's typically not the investment advisor itself, that's a separate institution, typically a bank or a broker/dealer that has what's known as custody over the assets.

Q. What benefits, if any, are there to having a third-party custodian hold a client's money rather than the investment advisor?

A. It's quite important. It serves as an extra check on the safekeeping of those securities. Because by having another institution, a third-party institution like a bank or a broker/dealer custody or house those funds, then it's much less likely that there can be the possibility of theft or other wrongdoing perpetrated by the investment advisor.

Q. To be clear, who has control over the funds in an investment advisory client's account?

A. Well, control over the funds typically rests with the client itself, with the customer, with the person who is doing the investing. They can, from time to time, if they want to, they can give some element of control over to the investment advisor. That's giving what's called discretion to the investment advisor where the advisor itself can decide which securities the advisor will essentially buy and sell on behalf of the customer or the client.

Q. You talked about a minute ago about third-party custodians, like banks and brokerage houses. How does the custodian know if it should take orders to transact its securities from the client or the investment advisor?

A. The custodian knows that because the investor sends those instructions directly to the custodian. So that has to be done in writing by the client. The client has to send a direction to the custodian to say, "You can accept directions" -- if they want to do this -- "You can accept directions from my investment advisor, and then go ahead, custodian, you can then make those investments as the advisor tells you."

Q. Does the custodian make any investment decisions on behalf of the client?

A. No, that's not the way it works. The custodian just houses the funds, but the custodian does not make the investment decisions.

Q. Does the custodian have any role in keeping the client informed of transactional activity in the client's account?

A. Yes. Yes. There is typically a requirement for the custodian, the bank or the broker/dealer, to send statements, to send monthly statements or quarterly statements to the investor to explain what has happened with the investor's funds over the last period.

Q. For purposes of these regular statements, who determines what the value of an asset that's in the client's account is?
A. Well, that depends. Very often the value of a security is easy to determine. If it's a big company like IBM or Apple that trades every day, the prices are in the newspaper, there's really not a question of what the value is. But in some securities, like the thinly traded stocks that we referred to earlier, it's not always clear exactly what the price is, and in that case, the investment advisor has the obligation to use its best efforts to determine what the price is.
Q. Who decides whether someone is an investment advisor?
A. The SEC has that responsibility. So if somebody is acting as an investment advisor under the definition, and let's say they have to be registered with the SEC as an advisor and they don't register, then the SEC can take legal action. So it makes those decisions.
Q. Are there any laws or regulations that regulate investment advisors?
A. Yes. There's one primary federal law, federal statute called the Investment Advisor's Act of 1940, and that statute regulates investment advisors.
Q. Are there generally recognized standards and practices in the investment advisory business?
A. Yes. Yes, there are. Speaking very generally, there's an overarching fiduciary duty of investment advisors to advisory

clients.

Q. As a general matter, what is a fiduciary duty?

A. A fiduciary duty is a legal duty to act in the best interest of that advisory client, of that client, at all times. It includes both what's referred to as a duty of loyalty and a duty of care.

(Continued on next page)

BY MR. BLAIS:

Q. And what is the duty of loyalty?

A. The duty of loyalty refers to the duty to make sure that the investment adviser is not harming that client in any way. So it cannot engage, of course, in any kind of theft or self-dealing. It cannot have a conflict of interest with respect to that client, or if it does have a conflict of interest, it has to make sure that that conflict of interest is completely disclosed to the investor.

Q. You also mentioned the duty of care. What is the duty of care?

A. The duty of care is really the positive duty by the investment adviser to act in a prudent and careful and diligent manner when it acts on behalf of the client. For example, when it recommends particular investments to the client, it can only do so after exercising care and diligence.

Q. In connection with the duty of loyalty, you testified about the concept of a conflict of interest.

What is a conflict of interest in the context of an investment advisory relationship?

A. Sure. So a conflict of interest is when the investment adviser might have some sort of ulterior motive for making an investment recommendation. So, for example, the investment adviser is supposed to be giving unbiased honest advice to the client.

Let's say, hypothetically, it's the case that that investment adviser's spouse or relative owns a company, and that company is looking for investors. Well, if that investment adviser recommends that the client invests in the spouse's company or the relative's company, that of course is a conflict of interest because that might not be the best investment for the client. If there is a conflict of interest like that, it must be completely and fully disclosed to the client.

Q. So just to be clear on that point, what, if anything, is an investment adviser required to do if he or she becomes aware of a conflict of interest?

A. If an adviser becomes aware of a conflict, first and foremost, they should try to avoid it. They should try and conduct their business in such a way that they simply don't have those conflicts. If they cannot run their business in that way, then that conflict of interest must be disclosed to the client so that the client understands that they are investing under the cloud of a conflict of interest.

Q. When should a conflict be disclosed?

A. As soon as the adviser knows about that conflict, as soon as reasonably appropriate. But they can't wait for many weeks or months; they have to act pretty quickly.

Q. Are there general standards of practice as to how a conflict of interest should be disclosed?

A. Yes, there are. So the conflict of interest typically is disclosed in writing. That can be disclosed through the various forms that the adviser has to file with the SEC and provide to clients. But they can also simply provide that disclosure in writing in, for example, a letter or an e-mail to a client.

Q. Now, what are the consequences when an investment adviser breaches or violates his or her fiduciary duty?

A. If an investment adviser breaches their fiduciary duty, that is considered a violation of a particular antifraud provision under the federal securities laws, and they can be sued by the SEC for fraud, and they can also be sued by their clients in a private matter, a private action.

Q. Now, we have been speaking generally about the concept of investment advisers generally. Are you familiar with the concept of a registered investment adviser?

A. Yes.

Q. What is a registered investment adviser?

A. Well, certain investment advisers, although not all, are required to register with the SEC. The way that works is it's generally the larger investment advisers, those advisers that are really quite big and have a lot of assets under management. There are requirements that those advisers have to register with the SEC.

Q. To be clear, can someone be an investment adviser but not a

registered investment adviser?
A. Absolutely. Absolutely. You can meet the definition of investment adviser. You have to follow many of the laws and rules that apply to investment advisers, yet you are not required to register with the SEC as an investment adviser.
Q. Now, you testified earlier about the fiduciary duties of investment advisers generally. Do those same duties apply to registered investment advisers?
A. Yes, yes. The fiduciary duty applies equally to unregistered advisers and registered advisers.
Q. What does an investment adviser have to do in order to register?
A. To register with the SEC, the investment adviser, again, has to fill out a long form. It's called a Form ADV, which stands for adviser. And that form has requests for voluminous information about the advisory firm. They have to fill that out. It's now done electronically. They have to send that in to the SEC, and then part of that form also has to be sent to clients so the clients understand their investment adviser.
Q. How often must this Form ADV be filed?
A. The Form ADV has to be filed at first when the adviser goes to register, and then it has to be updated, refiled on at least an annual basis.
Q. What generally is required on a Form ADV?
A. Well, it contains a lot of information. So it asks for

detailed information about the advisory firm, where it's located, who the principals are, who the owners are, who it is that is making the investment decisions, what kinds of strategies the adviser uses, what kind of clients the investment adviser has, whether any people who have been working there have had disciplinary problems that something investors often want to know, and it also, of course, discloses the ways in which that adviser is paid by its clients.

Q. Are there benefits to being a registered investment adviser?

A. Some people say that there are some cachet, some additional marketing benefit to being a registered adviser. Others might say that there is simply additional regulatory requirements that are placed on the advisers so that is a negative thing. I think that really goes both ways.

Q. After an investment adviser is registered, are there any ongoing requirements?

A. Yes, there are several. One of the most important requirement is that a registered adviser is subject to being examined by the SEC staff itself. So they are subject to the SEC knocking on the doors, coming in on a periodic basis, and the SEC staff doing an inspection and examination and audit effectively of that firm.

In addition, there are some rules that apply to registered advisers that simply do not apply to the unregistered ones.

MR. BLAIS: Your Honor, may I have a moment?

THE COURT: You may.

MR. BLAIS: No further questions for this witness.

THE COURT: All right. You may cross-examine.

CROSS-EXAMINATION

BY MR. TREMONTE:

Q. Good afternoon, Professor.

A. Good afternoon.

Q. I just want to touch on some of the topics that you testified about during the course of the past 45 minutes or so, and it may feel like we are jumping around about.

I will start with liquidity. You spoke about the definition of this concept as it applies to stock, correct?

A. That's right.

Q. You're generally familiar with the culture of folks who work on Wall Street, correct?

A. I'm somewhat familiar. I have never worked on Wall Street so I am not quite sure how to answer your question.

Q. But you know that when people talk about liquidity, sometimes they use that term the way that you were suggesting in connection with stock, but sometimes they just mean available cash?

A. To be honest, I really have not heard that to refer to available cash because cash would somehow automatically be

liquid. So I don't really understand the question.
Q. So the phrase that "this company has a lot of liquidity," that wouldn't strike you as an indication that it has a lot of available cash?
A. I think I would understand that to mean that the company had a lot of available cash.
Q. Moving to another topic, you testified somewhat about warrants.
So warrants are sometimes publicly traded, isn't that right?
A. I think they are, yes.
Q. But a warrant is, in essence, a contract, correct?
A. Yes. It's a right, and in that sense you can see it as a contract.
Q. It typically takes the form of an agreement between a party and a counterparty, correct?
A. That's correct.
Q. So you can have publicly traded warrants, but you could also have privately arranged warrants, correct?
A. I believe that's correct.
Q. So a warrant doesn't have to be traded on an exchange?
A. I think that's right.
Q. You and I can enter into a warrant agreement between ourselves?
A. I think that's correct, yes.

Q. Moving to a different topic, you described in general terms the Form 20-F that foreign private issuers are required to file, right?
A. Yes.
Q. And that's a required annual filing?
A. It's an annual filing, yes.
Q. It's actually a form, right, you can get a blank 20-F form?
A. You can. You can print the 20-F and hold the piece of paper in your hand, although these days most forms are filed electronically.
Q. And you would download that form typically from the SEC's Web site, is that right?
A. I think you can get it from the SEC's Web site, yes.
Q. And that form has a set of instructions attached to it?
A. Yes. Almost all SEC forms that I have seen have instructions attached to the forms.
Q. These blank forms essentially tell the person who is filling out the form the information that's required to be included, right?
A. Correct.
Q. Then there is a whole complex series of rules and decisional law that tell professionals how to interpret those instructions, right?
A. Yeah. There are sometimes interpretations. I'm not sure if it's necessarily decisional law, but there is some guidance

on how to interpret most forms.
Q. You could try to fill it out just as a matter of common sense if you wanted to, but professionals will look to these rules, right?
A. Correct.
Q. In a mature public company like, I don't know, IBM or something, the person principally responsible for filling out these forms would be the chief financial officer, is that correct?
A. I don't know that that's necessarily the case. I haven't worked in-house for a CFO to know it's necessarily the CFO. So in some cases the CEO has to approve certain parts of the form and other cases it's the CFO. So I'm a little hesitant to make a broad statement in that regard.
Q. And that's beyond your expertise?
A. Right.
Q. Again, you would look to the guidance that professionals would ordinarily look to in determining who should be primarily responsible in any given company for filling out these forms, right?
A. Well, I'm not sure that I want to adopt everything you're saying as true. I think it's right to say, as a general matter, when companies go to fill out their forms, they can, and often do, look to the interpreted guidance that you're talking about. I don't know that it's always necessary or they

have to do it all the time, but of course I would not dispute that the company and its lawyers can, and in many cases I am sure they do, look to those interpretations if they have questions about how to fill out the form.

Q. The company and their lawyers and their accountants and maybe their auditors would look to these rules and collectively try to figure out what to do?

A. Again, I don't know that that's always necessarily the case. It may be simply easy to look at the form, figure out what has to be filled out, put down the information. But I don't dispute that in some cases of course the company might want to put its head together with its lawyers or somebody else if they have a question about a particular question on the form.

Q. And there are some rules in effect, there is some legislation as to who has to sign these forms?

A. Yes, that's correct.

Q. That may be different in different contexts?

A. Yes.

Q. As a general matter.

A. As a general matter, that's right.

Q. Changing topics to Reg S, briefly.

If I understand your testimony correctly, Reg S shares typically cannot be the subject of, I think you said it's directed selling efforts into the United States?

A. That's correct.
Q. Does that mean that Reg S shares cannot be held in a domestic U.S. brokerage account or does that mean that they just can't be the subject of directed selling efforts?
A. My understanding is it's the latter. They cannot be the subject of directed selling efforts into the U.S.
Q. So they could be held in a domestic brokerage account?
A. I don't know of any prohibition on shares being held in a domestic brokerage account, unless, of course, that domestic brokerage account is held by a U.S. resident.
So my understanding of Regulation S is that the key definition of U.S. person turns on whether that person is a U.S. resident. If a non-U.S. resident has a U.S. brokerage account, we are getting into some very technical points about Regulation S, and my understanding is that there is not any direct prohibition on the kind of arrangement that you're referring to.
Q. Changing topics again, are you familiar with the concept of a stock transfer agent?
A. Yes.
Q. And a stock transfer agent, these are private companies that perform functions related to the handling and issuance of shares of stock?
A. Generally that's correct.
Q. Again, generally speaking, what these companies do is they

work for issuers typically?
A. They typically work for issuers, yes.
Q. When they work for an issuer, just to put it in the most basic terms, they keep track of the issuance of shares?
A. They do keep track of the issuance of shares, and they help to act as a general clearing house for the buying and selling of shares, yes.
Q. So it would be part of the function of a stock transfer agent, as part of keeping track of shares, to keep records showing how many shares are being issued for instance?
A. I'm hesitant to speak about the particular requirements of transfer agents because I don't consider that to be my direct area of expertise. I generally think what you said is correct, but I wouldn't want to testify to that effect.
Q. I don't want to ask you to go beyond your expertise.
Changing topics one more time, you talked about the relationship -- again, in general terms -- between investment advisers and, for example, custodians, is that right?
A. Yes.
Q. Is it possible in principle for an investment adviser to be, let's say, a signatory at a custodian?
A. I'm not sure what you mean by a signatory at a custodian.
Q. To have the authority to move shares of stock into and out of the custodian, on behalf of the investment adviser's clients?

A. I suppose a client could give an adviser that authority if it wanted to, yes.
Q. If the adviser had that authority, it would not extend to moving shares in and out of the custodian for the benefit of the adviser, consistent with the rules that you articulated earlier, correct?
A. Yes. It seems to me, if they did that, that would be a breach of fiduciary duty by the adviser, if I understood your hypothetical.
Q. Because they don't own the shares; they are acting on behalf of an agent?
A. They are acting on behalf of a principal, their client.
Q. They are acting as an agent on behalf of the client?
A. That's right.
Q. Just back to the very beginning of your testimony this afternoon, you indicated that you on occasion testify as an expert witness, is that correct?
A. Yes.
Q. You have done that in the past?
A. Yes.
Q. When you testify as an expert, you are qualified as an expert, correct?
A. That's a legal question that I think depends on the particular case. I don't know whether in every case I have been formally qualified, but I have testified on several

occasions as an expert.

Q. Fair enough. I didn't mean to put a legal question to you.

In those instances where you testified as an expert, your credentials are elicited by the person who is asking the questions, right?

A. Generally, yes.

Q. Then you're given a set of facts, right, that you have no previous personal understanding of, you're given a set of facts to opine on, correct?

THE COURT: I am going to sustain the objection to this line of questioning.

Go ahead.

Q. You're not testifying today as an expert witness in that sense, correct?

MR. BLAIS: Objection.

THE COURT: Sustained.

I have ruled, for reasons that are not germane to anything that you need to concern yourselves with, that this witness may testify as to information about the securities laws and certain regulatory requirements, but may not offer an opinion. The reason for this ruling is not a matter that you should be concerned with in any way, shape or form. It has to do with a legal ruling that I have made and nothing else.

Next question.

MR. TREMONTE: No further questions.

THE COURT: Redirect.

MR. BLAIS: Very brief.

REDIRECT EXAMINATION

BY MR. BLAIS:

Q. Professor Laby, you were asked some questions on cross-examination about whether Regulation S shares can be deposited in U.S. brokerage accounts. Do you recall that question?

A. Yes.

Q. Now, regardless of where Regulation S shares are held, can Regulation S shares be sold to U.S. persons?

A. Well, it depends what we are talking about. If we are talking about the initial sale when Regulation S applies, then no, those shares have to be sold outside of the United States, and no directed selling efforts to U.S. persons, and not sold to U.S. residents.

Q. Can Regulation S shares be part of directed selling efforts into the United States?

A. No. If there are directed selling efforts into the United States, then that would violate the strictures of Regulation S.

MR. BLAIS: No further questions.

THE COURT: You may step down, Professor.

(Witness excused)

THE COURT: You may call your next witness.

MS. HECTOR: The government calls Mr. Marshall Manley.

MR. TREMONTE: May we have a very brief sidebar?

THE COURT: Ladies and gentlemen, stand up and stretch, if you will, please.

(Continued on next page)

(At the sidebar)

MR. TREMONTE: This seemed like an appropriate time to bring up an issue that we had raised in one of our in limine motions. We would seek a limiting instruction from your Honor that Mr. Hirst is not an investment adviser. Simple as that.

THE COURT: There is no dispute in this case on that.

MR. BLAIS: No.

THE COURT: I will be happy to give that. He is not a registered investment adviser?

MR. TREMONTE: Neither an investment adviser nor a registered investment adviser.

(Continued on next page)

(In open court)

THE COURT: Ladies and gentlemen, I instruct you that there is no issue in this case that Mr. Hirst is not an investment adviser, registered or otherwise. So there is no contention and there is no dispute that he is not an investment adviser.

MARSHALL MANLEY,

called as a witness by the government,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell it for the record, please.

THE WITNESS: Marshall, M-A-R-S-H-A-L-L, Manley, M-A-N-L-E-Y.

DIRECT EXAMINATION

BY MS. HECTOR:

Q. Good afternoon, Mr. Manley.

A. Good afternoon.

Q. How old are you?

A. 76.

Q. Are you married?

A. Yes.

Q. Where do you live?

A. Florida.

Q. I'm sorry?

A. Florida.

Q. Mr. Manley, I would like to turn your attention to the very end of January 2010. What were you doing for a living at that time?
A. I was a chief executive officer at Gerova.
Q. How long did you work for Gerova?
A. From January 23, 2010 until April 7, 2010, approximately 70 days.
Q. During your tenure there, who was the president of Gerova?
A. Gary Hirst.
Q. Do you see Mr. Hirst in the courtroom here today?
A. He is over there but the machines are in the way. Yes.
Q. Could you just identify him by citing an article of clothing he is wearing?
A. He is at the second desk.
THE COURT: The second table and what place?
THE WITNESS: I think it's third from the right.
THE COURT: So noted. Thank you.
Q. Mr. Manley, I am going to ask you more questions about your time at Gerova, but first let me ask about your background.
Where did you go to high school?
A. Stuyvesant High School.
Q. Where did you attend college?
A. Brooklyn College.
Q. What year did you graduate?
A. 1962.

Q. Did you complete any postgraduate education?
A. I went to NYU Law School and graduated in 1965. Then I went to the University of Southern California and took some courses for a master's in political science but never obtained the degree.
Q. Following your graduation from law school, were you employed as a lawyer for some period of time?
A. Yes, ma'am.
Q. Approximately what time frame?
A. 1965 to about 1984, '85.
Q. Can you generally briefly describe your legal employment during that time?
A. I was an associate for four years and then became a partner in a law firm. Then I left that firm and became a named partner in a national law firm. Eventually left that law firm and became a named partner in another national law firm.
Q. So you said you practiced law till 1985. After that time, what did you do next?
A. I became president of a company called City Investing Company, which was a large conglomerate listed on the New York Stock Exchange, and its main subsidiary was the Home Insurance Company, and I became chairman of the Home Insurance Company.
Q. What was your role there, what was your title?
A. I was president and CEO of City Investing Company. We quickly liquidated that company. It was a large conglomerate

of 400 subsidiaries in 50 states and 45 countries, and we spun off or sold various assets. We sold Motel 6 for example. We spun off the Home Insurance Company. Then I became president and then CEO of the Home Group, which owned the Home Insurance Company.

Q. Until when did you work for City Investing and its various spin-offs that you have just described?

A. 1990.

Q. After 1990, what did you generally do for work before you joined Gerova?

A. I was retired and generally worked as a consultant in various areas and was involved in various small businesses.

Q. Now, turning your attention to the late 2009 time frame, around that time, did you learn of an entity called Asia Special Situations Acquisition Company?

A. Yes, ma'am.

Q. What is Asia Special Situations Acquisition Company, or what I will refer to from now on ASSAC for short?

A. It was a SPAC, which is essentially a special purpose acquisition corporation.

Q. Could you describe your understanding of what a SPAC is?

A. A SPAC is essentially where a group of -- let me rephrase it. A SPAC is an entity which raises money from various investors, with the purpose of eventually acquiring a company, usually in a certain field; I think ASSAC originally was Asia, I think. And after a certain number of years, if that acquisition doesn't take place, either because they don't find a company to acquire or because the shareholders of ASSAC in this instance voted against it, then the money is returned to the investors.

Q. And if the shareholders vote in favor of the acquisition, what happens?

A. If the shareholders vote in favor of the acquisition, typically what happens is the special purpose acquisition corporation acquires a company and that acquired company goes forward as the ongoing entity.

Q. Now, can a SPAC exist as a SPAC forever?

A. No. Well, it depends. I don't know. It depends on the terms of the offering, but what I have basically heard is there was always a deadline.

Q. Were you aware of whether there was a deadline for ASSAC to basically perform this acquisition?

A. I was told at a certain time that there was a deadline, I think January 23rd, or something like that, 2010.

Q. Is that transition sometimes referred to as de-SPACing for short?

A. When you make an acquisition, it's de-SPACing.

Q. How did you first come to learn of the entity ASSAC?

A. I was introduced to the entity by Stephen Weiss. Stephen Weiss was an attorney who represented somebody on the other side of a transaction I was involved in, and by coincidence it also turned out that he had graduated from law school and also had been a partner -- I don't think he was a partner -- an attorney in the New York office in the firm that I was involved in, because I practice in Los Angeles, and Stephen Weiss told me about ASSAC.

Q. Just to be clear, this transaction you're referring to where he was on the other side, does that have anything to do with ASSAC?

A. No, nothing at all.

Q. That's just how you came to know him?

A. Came to know about ASSAC.

Q. What did you learn from Stephen Weiss about ASSAC?

A. He told me ASSAC had entered into an agreement to acquire an Australia company called White Energy; it was in the coal business. White Energy would be the ongoing entity afterwards. And that the people at White Energy were interested in the possibility of adding two directors. He asked me if I and a person who I was involved with, Dennis Dammerman, who was the vice chairman and chief financial officer of GE, if we would be interested in discussing the possibility of being directors of White Energy.

Q. What was your response to this potential opportunity?

A. Sure. We'll talk.

Q. Did you come to understand what Steve Weiss's relationship was with ASSAC?

A. He was the attorney -- well, his law firm, Hodgson Russ I think it was called, they were the law firm for ASSAC and he was the lead attorney.

Q. Did the deal with the Australia coal company come to fruition?

A. Apparently, the transaction was signed, and we had one phone call with some of the White Energy people. They were in Canada when Mr. Dammerman and I talked to them. And then nothing happened because we heard that subsequently White Energy decided that they wanted to get out of the agreement, and they paid several million dollars to ASSAC to get out of the agreement.

Q. But the acquisition of White Energy didn't happen?

A. Did not happen. They apparently found another transaction as more favorable.

Q. So then what happened next with ASSAC?

A. The next thing that I heard of?

Q. Sure.

A. I was informed that ASSAC had apparently --

MS. HARRIS: Objection.

THE COURT: Sustained.

Rephrase the question.

Q. Were you contacted again at some point regarding the ASSAC opportunity?

A. Yes.
Q. Who contacted you?
A. Steve Weiss.
Q. When did this sort of further contact occur?
A. I believe it was December of 2009.
Q. Did you come to learn of a new plan for ASSAC?
A. Yes.
Q. What was that new plan?
A. ASSAC had apparently signed agreements to acquire some limited partnerships. One was Stillwater and the other was an entity called Wimbleton, and, in addition, Amalphis, which owned an insurance company called Allied Provident. And Stillwater I believe owned part or all of a reinsurance company called North Star.
Q. You said there was also an entity called Wimbleton?
A. There were two groups of partnerships. One was Wimbleton, which was managed by Western, and the other was Stillwater. They were two separate limited partnership groups.
Q. Now, what was the plan for what the ongoing entity would be if these acquisitions took place?

MS. HARRIS: Objection. Foundation.

THE COURT: Lay a foundation.

Q. Did you come to understand what the ultimate plan would be for ASSAC if these acquisitions were to take place, did you come to an understanding of that?

A. The plan that existed at that time?
Q. At that time.
A. Yes.
Q. What was your understanding of that?
MS. HARRIS: Objection.
THE COURT: Overruled.
A. In the insurance industry, a limitation on the amount of insurance that can be written, the premiums, is a multiple of a capital. The plan was that the assets of these limited partnerships would be put into insurance companies, whether it was North Star or Allied Provident, and that would permit those insurance companies to write more insurance.
In addition, at that time, because of what is termed the financial crisis, there were a significant number of limited partnerships which were constrained because of the economics of the United States at that time. So the plan was, assuming this worked, to continue to acquire more limited partnerships or non-liquid assets and put them into insurance companies and permit more insurance to be written. Then, of course, to build up and operate insurance companies.
Q. What role, if any, were you asked to play?
A. I was asked to become chief executive officer and vice chairman.
Q. What was your response to this opportunity?
A. I will look at it. My response was, if I was interested in

doing it -- this is not the normal ASSAC acquisition, because normally you acquire a company and it's an operating company, it has management, it has a board, and things like that. So my response was I would look at it, but if I were to go forward, I wanted to make sure that I could designate who was going to be on the board and I want to put together a management team. Because the ASSAC people who were already there were essentially people who just raised money and worked for a acquisition, they didn't have what I thought was normal business experience.

MS. HARRIS: Objection.

THE COURT: Overruled.

Q. Did you have any role in the negotiations between ASSAC and these acquisition opportunities with Stillwater and Western?

A. No, ma'am.

Q. Focusing on ASSAC, in general, not the entity that it would potentially become, did you have any role at ASSAC?

A. Well, Gerova is ASSAC. So I became --

Q. Prior to the acquisitions.

A. I met with certain shareholders of ASSAC because they had to make a decision whether to vote for or against, or I guess abstain, on the proposed acquisitions, and they wanted to know my background so I told them my background.

Q. Who was the president of ASSAC?

A. Mr. Hirst.

Q. When did you first meet him?
A. I believe it was sometime in January of 2010. It had to be January 2010.
Q. Do you remember the circumstances where you met him?
A. Not particularly, no.
Q. Did you have an understanding of Mr. Hirst's role and responsibilities at ASSAC?
MS. HARRIS: Objection. Foundation.
THE COURT: Overruled.
A. Using ASSAC before January 23.
Q. Before the acquisitions.
A. He was the president and chief executive officer and he was, my understanding, one of the people who put together ASSAC and was one of the people who was looking for acquisitions. That was what he was.
Q. As part of your introduction to ASSAC, did you meet an individual named Jason Galanis?
A. Yes.
Q. When did you first meet Jason Galanis?
A. I think I first met Jason Galanis in the fall of 2009.
Q. What were the circumstances of that meeting?
A. Steve Weiss called me and said that there was --
MS. HARRIS: Objection.
THE COURT: Is this offered for the truth of its content?

MS. HECTOR: No.

THE COURT: Ladies and gentlemen, this is not offered for the truth of its content but for the fact that Mr. Weiss said this, because it may have influenced the next steps that Mr. Manley, the witness here, may have taken.

So I will allow it for that limited purpose.

Go ahead.

A. Mr. Weiss said that there was a client that he knew called Jason Galanis, and he thought that he would be an interesting person for me to meet, would I be available, and we eventually met. I think we had coffee or lunch, something like that.

Q. Was this meeting before you were introduced to this ASSAC opportunity?

A. Yes.

(Continued and next page)

(Jury present)

THE COURT: I want to assure you, ladies and gentlemen, that the reason Eve is not here is not because she fell while running, she's fine, and you may continue.

MS. HECTOR: Thank you.

BY MS. HECTOR:

Q. Mr. Manley, I think you left off when I asked you what was your understanding of Jason Galanis' role at ASSAC.

A. He had apparently been involved in putting ASSAC together, I guess bringing investors. He was, I believe, involved with a major shareholder who came out of the Island of Malta, and he also was involved in either -- I don't know -- either initiating or negotiating these various transactions.

Q. Now, prior to these acquisitions or these transactions that you refer to, did you participate in any meetings with investors in the SPAC?

A. Not that I can recall.

Q. Did you go to meetings and introduce yourself as the potential new CEO?

A. I went to the meetings, and I was asked about my background, and I went to -- I met with whoever -- Roth Capital was the investment banking firm out of California, and they told me who to meet with.

Q. Do you recall approximately how many meetings you participated it?

A. I remember one meeting in California and a small handful in New York.
Q. What time, approximately, were these meetings occurring?
A. January, before the 23rd.
Q. Do you recall who accompanied you to these meetings?
A. I think the man's name was Ted Roth was at some of the meetings, and Mr. Hlavas was at some the meetings, and I think Mr. Weiss, perhaps, but I'm not sure.
Q. What was the purpose of the meeting?
A. These people were shareholders of ASSAC, and they had to make a decision to vote, and what I was there is to tell them my background, who I was.
Q. Was that the full extent of your work in connection with ASSAC or involvement in ASSAC prior to the acquisitions?
A. That's my recollection, yes.
Q. Did you eventually enter into an employment agreement with Gerova?
A. Yes. ASSAC, Gerova, same. Okay.
Q. Mr. Manley, I'd like to call your attention to what's been entered into evidence as Government's Exhibit 241.
MS. HECTOR: Your Honor, may I approach and give the witness hard copies in case he has trouble with the screen?
THE COURT: You may.
THE WITNESS: Thank you.
Q. And those, Mr. Manley, are in numerical order, and so I'd

like to call your attention to 241. It is on the screen in front of you if you can read it there, but if you have trouble, you have the document.

A. I'm more comfortable reading the document.

Q. Okay. So just looking at the first page of the document, do you recognize what this is?

A. Yes.

Q. What is it?

A. It's an employment agreement where I was going to be employed as vice chairman and chief executive officer of Gerova in the event the acquisitions were approved.

Q. Who negotiated this agreement?

A. Bruce Rosetto on my behalf, and I believe Steve Weiss on behalf of ASSAC.

Q. Who is Bruce Rosetto?

A. Bruce Rosetto was a lawyer in Florida who was with the firm Greenberg Traurig, and he represented me.

MS. HECTOR: If we can pull up just the first paragraph of this agreement, the one that starts "this employment agreement".

A. I see it.

Q. Okay. What is the effective date of this agreement?

A. December 1st, 2009.

Q. Did you start working for Gerova on December 1st, 2009?

A. No.

Q. Do you know why that date was listed in this agreement?
A. Yes.
Q. Why?
A. Because I wanted to make sure that I was covered by any director office liability insurance in the event somebody brought a claim as a result of my communications with the shareholders.
Q. Are you referring to those meetings that you had had with some of the ASSAC shareholders?
A. Yes. And they just picked an arbitrary date of December 1st.
Q. Who are the parties to this agreement, Mr. Manley?
A. It's signed by Gerova Financial Group, Ltd and Marshal Manley.
MS. HECTOR: If we could turn to the last page of the document, Ms. Sheinwald.
A. Yes.
Q. Is this the signature area that you were just referring to?
A. Yes.
Q. Okay. So who signs on behalf of Gerova Financial Group?
A. Gary T. Hirst.
Q. What is his title?
A. President.
Q. Who signed on your behalf?
A. I did.

Q. Focusing again on the first page of the document, the second whereas clause. What was your official title going to be at Gerova?
A. The second whereas clause?
Q. Yes. It says "whereas".
A. It was supposed to be chief executive officer and vice chairman of the board.
Q. Now, turning down to Section 2A where it describes your position.
A. Yes.
Q. Could you read for us what it states as to the effective date of your position?
A. "For the interim period that commenced on the effective date and ends on January 23rd, the executive shall be employed as executive vice president of the company. At all times from and after January 23rd, 2010, the company shall employ the executive and the executive shall serve as the chief executive officer of the company. The executive shall be responsible for overseeing and managing the business, including exercising authority for the management of the day-to-day business" --
Q. That's fine. I'm sorry. I meant for you to do the first line. I'm sorry.
A. Okay.
Q. Why didn't you effectively start as CEO, according to this employment agreement, until January 23rd?

A. If the shareholders or ASSAC didn't approve the acquisition, there would be no company.
Q. Did you start working as CEO of Gerova starting on January 23rd?
A. Yes ma'am.
Q. Now, if you could turn to page 3 of this agreement, Section 3A?
A. Yes.
Q. Do you remember what your salary was under the terms of this agreement?
A. $650,000 a year.
Q. Now, in addition to your employment agreement, did you also enter into a share purchase agreement?
A. I did not, a company calls Marseille Capital did.
Q. Okay. What is Marseille Capital?
A. Marseille was a limited liability corporation which was set up by Bruce Rosetto of which I was the shareholder in those days.
Q. Could you look at what's been marked and admitted in evidence as Government's Exhibit 640?
A. Which exhibit?
Q. 640.
A. 640.
Q. What is this document?
A. This is a share purchase agreement between ASSAC and

Marseille Capital and Marshal Manley.
Q. Marseille Capital, is that that entity you just referred to in which you were the shareholder?
A. Yes ma'am.
Q. Who negotiated this agreement?
A. Bruce Rosetto on my behalf, and I believe Steve Weiss on behalf of ASSAC.
Q. Who are the parties to this agreement?
A. ASSAC, Marseille Capital is signed by me, too.
Q. Now, turning to the last page of this document, who signed this document on behalf of Asia Special Situation Corporation?
A. Mr. Hirst.
Q. And on behalf of Marseille and yourself?
A. I did.
Q. What is your recollection of the general terms of this share purchase agreement?
A. It was a five-year agreement in conjunction with the purchase of a little bit over 5 million shares of ASSAC in which the company was going to lend me $20 million on a nonrecourse basis, and at the end of five years, I would either have to purchase the shares and pay off the loan or give up the opportunity. It's a typical long-term incentive compensation package.
Q. When you say "typical", typical in your experience?
A. In my experience in the corporate world, this is something

that is granted to executives that work over a long period so they would think long-term about the company.
Q. Let's turn to page 3, Section 2 of this document, the section entitled "Sale and purchase of subject shares".
A. I see that there.
Q. Okay. So looking at 2.1, what was it that the company, in this case ASSAC or Gerova, was providing to Marseille?
A. The company was going to sell 5,333,333 shares to Marseille, and the purchase price was $3.75, total purchase price $20 million, and Marseille was going to pay by delivering its noninterest-bearing share subscription note, and subject to mandatory prepayment all or in part at the rate of $3.75.
Q. What was your understanding of what the nonrecourse note was?
THE COURT: All right. Ladies and gentlemen, we're going to hold you in suspense on the answer to that question. We're going to break for the day, and we're going to pick up tomorrow morning at 10:00. I apologize that what happened happened this morning. Not your doing, and not anyone in this courtroom's doing. But I know you understand the importance of getting a good start because we all want this trial to proceed at the proper pace, and so we're all working hard to make that happen, and I appreciate your cooperation in that effort, also.
What else am I going to tell you? Do not discuss the case among yourselves or with anyone else, do not do any

internet searches, do not do any postings on any social media site, but I have a funny feeling you probably have a few other things to do with your time besides stuff like that, like cooking dinner and taking care of family and pets and all of that, so have a pleasant evening, and I'll see you tomorrow.

(Continued on next page)

(Jury not present)

THE COURT: See you all tomorrow.

MS. HECTOR: Your Honor, if I may have one moment?

THE COURT: Yes. Be seated, please.

MS. HECTOR: We have an evidentiary issue that we will need to raise that will be relevant to Mr. Hlavsa's testimony, which we expect will happen tomorrow. I'm just inquiring whether your Honor would like us to address that in the morning or --

THE COURT: Go for it.

MS. HECTOR: Okay.

THE COURT: Mr. Manley, you may step down.

MS. HECTOR: Mr. Hlavas engaged in chats with Mr. Hirst via Skype. So I think your Honor is probably generally familiar with Skype, but they were the kind of chats on Skype that aren't video, but chats. So they appeared in his Skype -- the Skype portion of his computer as chats. He cut --

THE COURT: As text.

MS. HECTOR: As text.

THE COURT: Okay.

MS. HECTOR: With dates and times and the content of the communications. He cut and pasted those chats into a Word document, which he saved and produced in connection with this litigation. We would like to introduce portions of those chats with Mr. Hirst during his direct testimony. The chats, the full extent of the chats range numerous months, August, 2010 to April, 2011, because he had chats with Mr. Hirst over that entire period of time on various topics. We plan to admit or to seek to admit just four portions of those chats, and we have provided those to the defense. My understanding is that they are going to object to those chats on the basis of a rule of completeness.

THE COURT: All right. You've teed it up.

Let's hear the objection.

MR. TREMONTE: Yes, your Honor. The chats that Mr. Hlavas cut and pasted out of his Skype account and then turned over to the SEC run to something on the order of 20 pages. The relevant section of the chat conversation between Mr. Hlavas and Mr. Hirst runs to about three and a half pages. We think the context matters quite a bit in those three pages. It covers three days, September 27th, September 28th, September 29th, three days that are quite important in this case, and we believe that the jury should have as one integral exhibit those three or three and a half pages rather than the excerpts that the government has prepared so that they will have the full context.

THE COURT: I think what would be useful for me to have is the three and a half pages with the excerpts highlighted so I know what we're dealing with. And voila, it's right there for me.

MS. HECTOR: I have that. I will say, originally, the defense had told us that they wanted the entirety of the chat, so I'm handing you -- it's the entirety of the chats with the highlighted portions that we're requesting to be admitted. I now understand that I believe their argument is that the full day of each of the chats that we've --

THE COURT: So the dates the defendant is asking to have in under the doctrine of completeness is the 27th, yes?

MR. TREMONTE: Yes, your Honor.

THE COURT: And what are the other dates?

MS. HECTOR: That one goes to the 28th.

THE COURT: This is Mr. Tremonte's call.

MR. TREMONTE: Yes. The 27th to the 30th inclusive.

THE COURT: Here's the next question. Is the government's objection anything more than, gee, that's a lot of unnecessary words, or is there something more to the objection?

MS. HECTOR: Your Honor, it's hearsay as to the defendant. We can put in the defendant's statements because they are the defendant's statements. But to argue that the entirety of the chats for those days needs to come in as a rule of completeness is akin to arguing that every email from a particular day should come in if we're placing one email into evidence. These are separate chats. Now, if they had a rule of completeness argument, then they need to explain why that additional information is necessary to understand the portions that we have put before the jury or seek to put before the jury or explain why it's misleading in some way for us to leave out the portions that they want. But we are entitled to put in the defendant's statements, and they are not entitled to put in additional of the defendant's statements for no basis, with no hearsay exception.

THE COURT: Well, I think the way the rule of completeness operates is, first, you are offering something which you are, let's say, arguably entitled to offer. The rule of completeness says that not because it's a standalone exception to the hearsay rule, but when you offer something you're entitled to offer, I have to determine whether the sake of completeness requires that simultaneously that which the defendant seeks to offer come in, even though the defendant could not offer any of that in the first place. So the rule of completeness, as I see it, potentially can trump a hearsay objection.

MS. HECTOR: Absolutely. I completely agree, your Honor. I haven't heard an articulation of why the additional portions of the chats that fill out the rest of those days satisfies the requirements of the rule of completeness. I don't see why those additional statements are necessary to provide context or explain what we have sought to put in or to prevent what we have sought to put in from misleading the jury.

THE COURT: Well, I'm going to hear from Mr. Tremonte, and then I'm going to make my own review and make my own determination of whether, under the rule of completeness, fairness dictates that if you be permitted to offer one portion of the day, that there is some other portion that comes in. So let me give Mr. Tremonte an opportunity to make his argument.

Go ahead.

MR. TREMONTE: Your Honor, this is one of a very small handful of vitally important communications that were actually documented in this case. This is, according to the government's hearing, the moment when Hlavsa receives for the first time complete information about the existence of the warrant agreement and the issuance of the shares. It is vital, in our view, that the jury have an opportunity to examine all of these communications over this three-day period so that they can determine for themselves the extent to which Mr. Hlavas expresses anything other than a totally pedestrian reaction to the information that he is receiving. And without the benefit of the full context of the chats, they won't be able to do that. So in our view, it is among the most important documents in the entire case for the jury to have in its entirety.

I would add to, your Honor, that the evidence will show that Mr. Hlavas, who reported this to the government, cut and pasted these chats out of his Skype account after he learned that the investigation was under way. That is relevant as well because he had the opportunity to select what he wanted to include in this document, and the government did not seek by subpoena or otherwise to obtain the complete chats. So for that reason, as well, we think it's important the document remain whole.

We are not asking for the entire body of the chats that he cut and pasted into one document and handed over, but just the three relevant dates.

MS. HECTOR: Your Honor, first of all, with respect to what Mr. Hlavas did to record this information and how he did it and any sort of questioning to suggest that Mr. Hlavas left something out or altered something in any way, that goes to the weight, and they can ask Mr. Hlavas on the stand what exactly he did to preserve the material that is being presented to the jury. But on the additional information provided in these chats over the course of the day, first of all, most of it is entirely irrelevant to the issues before the Court.

THE COURT: Well, let me ask you. Is Mr. Hlavas going to take the stand in my courtroom and say, "And when I heard this information, I learned this in this chat, I was shocked, horrified and surprised?"

MS. HECTOR: He is certainly going to say that he was surprised when he received this information.

THE COURT: Okay.

MS. HECTOR: He certainly is. But I don't think the additional chats shed light on the context of the conversations that he had in the chats that are highlighted. It just doesn't. And it's oftentimes later in the day, the 28th at 11:31.

THE COURT: Let's say you cut it off on the 27th with the line, "I have received the Shahini warrant." Okay? That's where you want to cut it off, let's say, and let's say the next words out of his mouth was, "Well, that doesn't surprise me at all." Why would that be under the rule of completeness, under your theory, under your theory, the information is that I've received the Shahini warrant. That concludes what I'm offering it for. His reaction to that information, I'm not offering it for his reaction to the information.

MS. HECTOR: Your Honor, if he had that reaction in this text message, in this chat, then yes, I think for the rule of completeness that would fairly be placed before the jury. That's not what we have in this document.

THE COURT: No. But the defendant says that what we have also is tantamount to an expression of nonsurprise. It is in context the equivalent. Now, I thought you were going to say to me, no, under the rule of completeness, his reaction to the information, even if he said the words "this comes as no surprise" or "I could care less" wouldn't come under the rule of completeness, and I was ready to hear you on that. But once you say that that would come in under the rule of completeness, why doesn't the rest of it come in so that the defendant can ask the jury to infer from the absence of a reaction that there was no reaction, this was not any kind of shocking news? What's the difference between the expressed statement and the inference they would seek to draw from the balance of the day's conversation.

MS. HECTOR: I don't think the fact that he later in the day has communications with Gary Hirst about other topics completely separate and apart from the Shahini warrant agreement sheds light on his reaction to that agreement.

THE COURT: Well, you are correct that 11:58 is later in the day than 11:31. I do agree with you there.

MS. HECTOR: My point is that communications between -- then every communication thereafter between Mr. Hlavas and Gary Hirst would shed light on -- if that communication does not include any information about the Shahini warrant agreements could arguably shed light on his reaction to that information. I just don't think that argument holds water.

THE COURT: I think everyone's candor is appreciated. This trial can't go forward without candor. Everybody's been candid with me, and I appreciate that. That is helpful, and I don't want to punish anybody for candor, but the truthful answer to my question, is this guy going to get up here and say, "When I learned this, I was shocked and surprised and horrified," and the answer is, well, not in those words, but that's the sentiment, at least. And you concede that if he said in the excerpt "I'm not surprised", that would come in under the rules of completeness. So I don't know that taking it down to some period of time and maybe the balance of the day is so horrifying.

Let me ask Mr. Tremonte, why do you need anything earlier in the day on, for example, the 27th of September?

MR. TREMONTE: We don't, your Honor. The first reference, to be precise, it's -- I don't know if the pagination is the same -- but it's the bottom --

THE COURT: 45245?

MR. TREMONTE: Exactly.

THE COURT: I've got it.

MR. TREMONTE: And the last reference to the warrants is at the very bottom of the page, actually top of the next, 9/30 11:17, Gary Hirst says, "Here's the warrant calculation," and Hlavsa says, "Thanks." That's at 11:13:26. We're talking about one, two, I don't know, three pages altogether.

THE COURT: Wait a minute. Yes, I see. All right. Well, listen --

MS. HECTOR: If I may, one additional point.

THE COURT: You may.

MS. HECTOR: I appreciate your Honor's point about whether Mr. Tremonte can point out Mr. Hlavsa's reaction. I think he can cross examine Mr. Hlavas to say what, "Was your reaction?" And if Mr. Hlavas says he was shocked, et cetera, he can say, "Did you have further communications" --

THE COURT: No, I thought you were going to elicit that.

MS. HECTOR: I am going to elicit that.

THE COURT: Okay. So he wouldn't be cross examining on a point that you're going -- just to reconfirm the point you made.

MS. HECTOR: Fair. But he can cross examine Mr. Hlavas to say, "Do you have communication with Mr. Hirst later in the day? What was the content of that communication? Did you confront Mr. Hirst in those communications?" Et cetera. And he could potentially try to impeach him with a document like this to suggest that he didn't. But I don't think --

THE COURT: That's one way to do it.

MS. HECTOR: -- it comes in for the --

THE COURT: That's one way to do it, I agree with you, that is one way to do it.

MS. HECTOR: But I don't think it comes in under the rule of completeness to explain the statements that we are eliciting. I think that is a much more limited rule that goes to whether there's additional information in this document that is necessary to shed light on the contents of this document. And I don't think there is additional information in this document that is necessary to explain and to shed light on the contents of this document and to avoid misleading the jury about the contents of this communication.

THE COURT: But even on cross examination, your position is he can't offer the document to impeach the witness.

MS. HECTOR: Well, it would depend on, I guess, how the cross examination went. If he denied saying certain things in the document, potentially. It would depend.

THE COURT: If he said, "I don't remember what my reaction was."

MS. HECTOR: Then I don't think the document comes in.

THE COURT: All right. Well, of course, that would contradict the testimony he gave on his direct that he was shocked and horrified.

MS. HECTOR: Well, I thought you meant "I don't remember what my additional communications were that day," not that, "I don't remember what my reaction was."

THE COURT: Well, did you express shock and horror, and the answer would be, presumably either "no", or "I don't remember".

MS. HECTOR: Or "yes, I did". Maybe not via Skype, but in other contacts.

THE COURT: Okay.

MS. HARRIS: Your Honor, just one other point for consideration as the Court muddles this over. I think we have a situation in this case where we have this 10 seconds or 12 seconds of a phone call that are being played, and then these just very few snippets of a Skype call, and I think there is a danger here where, obviously, these are the few pieces of reported evidence, you know, the kind of evidence that jurors do want to latch on to. They have it, oh, it's a transcript of a call that actually happened. It's the actual text. And I think there sort of is a probability of completeness also to avoid 403 problems to say, to put the meaning of that communication in context so that it's understood so that it's not misleading. So it's a partial -- I would say the same rule of completeness issues that your Honor has just been discussing with the government, but there's an additional overlay of concern that it can be taken -- it's taken out of context, and you know how offering extrinsic -- the element of offering extrinsic evidence for purposes of impeachment, it doesn't happen that often given the way crosses usually go. So we'd ask those considerations also come into play.

MS. HECTOR: Your Honor, I also just want to point out for your Honor that I'm concerned that what they are actually trying to do is to get in other statements within this document that have nothing to do with the Shahini shares for their truth to try to make arguments about their client's state of mind, which is entirely improper.

THE COURT: Give me a for instance.

MS. HECTOR: For instance, there's a section at 9/30/2010 at 11:42 where Mr. Hirst and Mr. Hlavas are having some discussion about prohibition of shares to someone named Tag, and Mr. Hirst is saying, "You need to speak to Jason and Shant about this. I'm not in the loop." I suspect that the defendants will try to make an argument on that basis, that Mr. Hirst both tried to reach out to Jason and the lawyer to confirm or provide information about something and is stating that he's out of the loop on some sort of alternative transaction that has nothing to do with the warrant agreement of this case.

So my concern, your Honor, is that this is being couched as a rule of completeness argument, but what they are really trying to do is put in other statements of their client for the truth to make defense arguments, and that is improper, and that is what I think is trying to be done here under the guise of a rule of completeness, and it's just not appropriate.

THE COURT: All right.

MR. TREMONTE: Your Honor.

THE COURT: Do you have any other example you want to point to?

MS. HECTOR: 9/28/2010 at 2:21:45. I'm sorry. I thought that was Gary.

MR. TREMONTE: Your Honor, while the government is looking, I can say, number one, I wish we had thought of that, and number two, we would be prepared --

THE COURT: It's a great idea, isn't it?

MR. TREMONTE: It's really not our intention, and I think we can probably work out some limited redactions to put us in a position to reach a compromise here. It's not our intention, we've never communicated that, and that's not what we're looking to do.

THE COURT: I'm putting you in negotiation L, and I'm not ruling on it right now, but that's where I'm sending you to see whether you can work out an arrangement. You've heard what I've said, so that's where we are.

Have a pleasant evening. Thank you.

(Adjourned to September 14th, 2016, at 10:00 a.m.)

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